

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



74-1856

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**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

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ERWINE LAVERNE and ESTELLE LAVERNE,

*Appellants,*

—against—

HOWARD J. CORNING, JR., Mayor; HUTCHINSON DUBOSQUE,  
Deputy Mayor, Police Commissioner and a Trustee; ORIN  
LEACH, JOHN MACKAY and DOUGLAS DESPARD, Trustees;  
HUGH JOHNSON, Building Inspector; and EDWARD J.  
MEEHAN, Police Sergeant; jointly and severally, and indi-  
vidually and as respective officers as stated of the Incorpo-  
rated Village of Laurel Hollow,

*Appellees.*

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**JOINT APPENDIX**

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MICHAEL RATNER

351 Broadway

New York, New York 10013

[212] 431-4118

COHN, GLICKSTEIN, LURIE, OSTRIN  
& LUBELL

1370 Avenue of Americas

New York, New York 10019

[212] 757-4000

*Attorneys for Appellants*

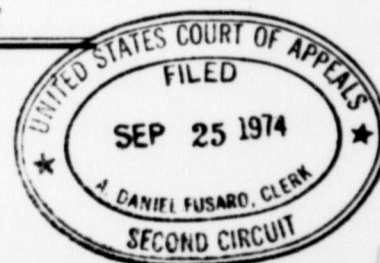
MUDGE, ROSE, GUTHRIE & ALEXANDER

20 Broad Street

New York, New York

[212] 422-6767

*Attorneys for Appellees*



PAGINATION AS IN ORIGINAL COPY

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DOCKET SHEET  
67 CIV. 2830

## UNITED STATES DISTRICT COURT

Jury demand date: 9-13-67 by plttf.

C. Form No. 106 Rev.

**JUDGE METZNER**

## TITLE OF CASE

## ATTORNEYS

ERVINE LAVERNE AND  
ESTELLE LAVERNE

## For plaintiff:

~~Lubell & Lubell~~  
103 Park Ave. N.Y. 10017

VS

Cohn, Glickstein, Lurie, Ostrin & L.  
1370 Ave. of the Americas -757-4000HOWARD J. CORNING, JR., MAYOR;  
HUTCHINSON DUBOSQUE, DEPUTY MAYOR,  
POLICE COMMISSIONER AND A TRUSTEE,  
CRIM LEACH,  
JOHN MACKAY, AND  
EUGENE DESPARD, TRUSTEES,  
MARTIN DYER, CHAIRMAN OF THE PLANNING BOARD, AND  
RICHARD J. LERMAN, POLICE SERGEANT, JOINTLY AND  
SEVERALLY, AND INDIVIDUALLY AND AS RESPECTIVE  
OFFICERS AS STATED OF THE INCORPORATED VILLAGE OF  
LAUREL HOLLOW

## For defendant:

~~Horrie H. Schneider~~  
~~Nassau County Executive Bldg., - Lincoln, Ill.~~  
Mudge, Rose, Guthrie & Alexander  
20 Broad St., NYC 10005 (subst 10-9-70)

## STATISTICAL RECORD

## COSTS

## DATE

NAME OR  
RECEIPT NO.

## REC.

## DISR.

S. 5 mailed

X

Clerk

10/4/67 Lubell  
10/5/67 MUDGE

15

-

S. 6 mailed

Marshal

1

-

Cause of Action: VIOLATION OF  
CONSTITUTIONAL RIGHTS

Docket fee

Witness fees

Action arose at:

Depositions

DATE	PROCEEDINGS	Date of Judgment
Y 24-67	Filed complaint and issued summons	
15-67	Filed summons & return, served the following: Howard J. Corning by his wife-7-27-67-EDNY Hutchinson Dubosque by Mother-in-law-8-8-67-EDNY Orin Leach-by M s. Cuthill-housekeeper-8-8-67-EDNY John Mackay by his wife-7-27-67-EDNY Douglas Despard by his wife-7-27-67-EDNY Martin Dwyer by Margaret Lindsay-8-8-67-EDNY Edward J. Keenan-personally-7-27-67-EDNY Hugh Johnson by his son-8-8-67-EDNY	
29-67	Filed ANSWER of defts.	MHS
13-67	Filed plttfs' jury demand	
21-67	Filed defts' notice to take deposition	
27-67	Filed stipulation and order adjourning deposition of Erwine Laverne to 9/27/67; further stipulated that deposition of pltf. Estelle Laverne is adjourned to 10/17/67 Ryan, J.	
8-68	Filed plaintiff's notice of taking deposition of Howard J. Corning, Jr.	
8-68	Filed plaintiff's notice of taking deposition of Hutchinson Dubosque	
8-68	Filed plaintiff's notice of taking deposition of Hugh Johnson	
20-68	Filed plaintiff's affidavit and notice of motion to produce and inspect, ret. 6-27-68	
20-68	Filed plaintiff's memorandum in support of motion.	
19-68	Filed memo endorsed on motion filed 6-20-68.--Motion marked off for non-appearance. Metzner, J. mn	
7-68	Filed plaintiff's affidavit and notice of motion, to produce and inspect, ret. 8-15-68	
7-68	Filed plaintiff's memorandum in support of motion.	
8-68	Filed defendant's memorandum in opposition to motion for production.	
22-68	Filed defts memorandum in opposition to motion for production.	MHS
22-68	Filed Memorandum #35129 - *** The Court orders the production of all documents requested in items 1 through 14, which are presently in the possession of defts, and which emanate from the period between Jan. 1, 1960 to Dec 31, 1962. The above documents should be produced within thirty (30) days from the date of this order. So ordered Tenney, J MN	
22-68	Filed copy of memorandum #35,129	
11-68	Filed VERIFICATION AND Statement of Readiness	
13-69	Filed order pursuant to calendar rules 6 & 13. Sugarman, Ch.J.	
13-69	Filed plttf's designation of trial counsel.	
12-69	Filed deft. (Howard J. Corning, etal) designation of trial counsel.	
21-69	Filed plttfs' affidavit and notice of motion to remove case from Non-jury cal. 4 to Jur cal. 2, etc.	
21-69	Filed plttfs' memorandum of law.	
21-69	Filed order that the motion is granted that the case be removed from Non-Jury Cal. 4 and placed on Jury Cal. 2--Lasker, J. m/n	
19-69	Filed order pursuant to Cal. Rules 6 & 13. Sugarman, Ch.J.	
27-70	Filed plttfs' affidavit & notice of motion for summary judgment ret. 4-7-70	
27-70	Filed plttfs' memorandum of law in support of motion for summary judgment	
6-70	Filed stipulation that plttf's motion now returnable 4-7 is adjourned to 4-14-70	
13-70	Filed affdvt of Howard Corning in support of defts' motion for summary judgment	
13-70	Filed defts' memorandum of law in support of defts' motion for summary Judg.	
14-70	Filed stipulation that motion ret. 4-14-70 is adjourned to 4-28-70	
18-70	Filed defts' 9d statement pursuant to Court Rules of US District Ct. in opposition to plttfs' motion for summary judgment & in support of defts' motion for summary judgment	

DATE	PROCEEDINGS	Date Judge
July 6-70	Filed Memorandum #36939 by Tenney, J. ---- "***** Accordingly, plttf's motions for summary judgment is granted and deft's motion is in all respects denied. Submit order on notice in accordance herewith. Tenney, J." m/n	
Jul.6-70	Filed plttf's affidavit and notice of motion for summary judgment, ret. 4-7-70. (Copy)	
Jul.6-70	Filed copy of plttfs' affidavit and notice of motion to produce and inspect, ret. 8-15-68.	
Jul.6-70	Filed copy of defts. Cross notice of motion for summary judgment, ret. 4-14-70.	
Jul.6-70	Filed copy of plttfs' reply memorandum of law.	
Jul.6-70	Filed copy of memorandum of law in support of defts' cross motion for summary judgment and in opposition to plttf's summary judgment motion.	
Jul.6-70	Filed plttf's memorandum in support of motion for production (Copy)	
Jul.6-70	Filed copy of plttf's affidavit and notice of motion for production, ret. 6-27-68.	
Jul.6-70	Filed copy of plttf's notice to take deposition of Hugh Johnson.	
Jul.6-70	Filed copy of defts' notice to take deposition of Estelle Laverne.	
Jul.6-70	Filed copy of plttf's notice to take deposition of Hutchinson Dubosque.	
Jul.6-70	Filed copy of plttf's notice to take deposition of Howard J. Corning, Jr.	
Jul.6-70	Filed copy of plttf's demand for jury trial.	
Jul.6-70	Filed defts' notice to take deposition of plttfs. (Copy)	
Jul.6-70	Filed copy of summons.	
Jul.6-70	Filed copy of complaint.	
Jul.6-70	Filed copy of ANSWER.	
Jul.6-70	Filed copy of reply affidavit of Jonathan W, Lubbell.	
Jul.6-70	Filed copy of affidavit of Thomas C. Platt.	
Jul.6-70	Filed copy of affidavit of Hugh Johnson.	
Jul.6-70	Filed copy of plttfs' memorandum of law in support of motion for summary judgment.	
Jul.6-70	Filed copy of deft's reply memorandum in opposition to motion for production.	
Jul.6-70	Filed copy of NOTE OF ISSUE.	
Jul.6-70	Filed copy of plttf's notice of motion to remove case from non-jury cal. etc. ret. 3-17-69.	
Jul.6-70	Filed copy of plttfs' memorandum of law.	
Jul.6-70	Filed copy of defts' pre-trial memorandum.	
Jul.6-70	Filed copy of plttfs' pre-trial memorandum.	
Jul.6-70	Filed copy of affidavit of Jonathan W. Lubell.	
Aug.20-70	Filed letter to Judge Tenney from plttf's atty. in opposition to counter order.	
Aug.20-70	Filed letter to Judge Tenney from Mudge, Rose, Guthrie & Alexander dtd. 8-7-70.	
Aug.20-70	Filed letter to Judge Tenney from Mudge, Rose, Guthrie & Alexander dtd. 7-27-70.	
Aug.20-70	Filed affidavit of service of counter order.	
Aug.20-70	Filed Opinion #37032--Accordingly, and for the foregoing reasons, the Court will sign the order submitted by plttfs. on 7-17-70 and defts' request for permission to seek leave of the Court of Appeals to appeal said order is denied. It is so ordered--Tenney, J. m/n	
Aug.20-70	Filed order that summary judgment be entered herein in favor of plttfs. and against defts, on the first two counts of the complaint for such amount as shall be found due for damages, this cause be placed on the trial jury calendar for sole issue of damages on first two cts. of complaint, Tenney, J. m/n Judgment ent-Clerk. ent. 8-21-70.	
1-70	Filed certain defts' notice to take deposition of plttf on 9-30-70	
15-70	Filed plttfs' memorandum in support of objection to defts' notice of deposition	
15-70	Filed affdvt of Henry Stern (for defts') in opposition to motion of plttfs'	
15-70	Filed defts' memorandum of law in opposition to Rule 26 motion of plttfs'	

page 3

DATE	PROCEEDINGS	De Jud
Sep 15-70	Filed pliffs' notice of motion & affdvt for a protective order barring defts' from taking further deposition of pliffs	
Sep 15-70	Filed memo endorsed on motion filed this date--Motion denied following argument--Depositions to be taken on 9-30-70, unless parties agree otherwise--So ordered--Mansfield, J. m/n	
Oct 9-70	Filed affdvt & consent order of substitution of atty for defts'-So ordered-Ryan, J.	
Nov 9-70	Filed stip & order that hearing is adjourned until 1-11-71 in order to complete discovery on the issue of damages--So ordered-Murphy, J.	
Jan 12-71	Filed stip & order that hearing is adjourned from 1-11-71 to 4-12-71 in order to complete discovery on the issue of damages--So ordered-Cannella, J.	
Apr 7-71	Filed stip & order that hearing is adjourned from 4-12-71 to 6-15-71 in order to complete discovery on issue of damages--So ordered-McGohey, J.	
Jun 14-71	Filed stip and order that the hearing scheduled is adjourned from 6-15-71 to 10-1-71 in order to complete discovery on the issue of damages as ordered by this Court (Mansfield J.) on 9-15-70 McGohey J.	
Oct 1 71	Filed Stip & Order that the hearing scheduled is adjourned from 10-1-71 to Jan 3 1972 in order to complete discovery on the issue of damages as ordered by this Court on 9-15-70 by Mansfield, J. So Ordered- Bryan J.	
Dec 13 71	Filed Defts' pre-trial memorandum.	
Dec 13 71	Filed Pliffs' pre-trial memorandum.	
Dec 14 71	Filed Consent Pre-Trial Order. - Pierce J.	
Jan 19 72	Filed Defts' request for production of documents under Rule 34.	
JAN 24 72	Filed Defts' Supplemental Pre-Trial Order. So Ordered-Frankel J. m/n	
Feb 27-72	Filed defts' affdvt. and notice of motion, for an order vacating an order entered 8-21-70. Ret. 10-10-72, Room 1506.	
Feb 27-72	Filed defts' Memorandum of Law in support of motion to vacate the order granting partial summary judgment.	
Nov. 16-72	Filed stipulation that defendants' motion to vacate partial summary judgment is adjourned to 11/3/72.	
Nov. 16-72	Filed Plaintiffs' Memorandum of Law in opposition to Defts' motion to vacate order granting partial summary judgment.	
Nov. 16-72	Filed OPINION #38914. Tenney, J. Defendants' motion to vacate is denied without prejudice to its renewal before the judge to whom this case is now assigned. So ordered. (mailed notice).	
Nov. 16-72	Filed defts' Reply Memorandum of law in support of their motion to vacate the order granting partial summary judgment herein.	
Nov 9, 73	Filed notice of change of pliffs name and address	
Dec. 19-73	Filed pliff's memorandum in opposition to deft's second motion to, vacate order granting summary judgment.	
Dec. 19-73	Filed affidavit of Alfred Forman of service.	
Dec. 19-73	Filed pliff's memorandum of law in opposition to deft's motion to, vacate the order granting partial summary judgment.	
Dec. 20-73	Filed pliff's memorandum in support of their right to recover damages.	
Jan. 16-74	Filed MEMORANDUM & ORDER: The parties will be summoned by a Magistrate for conference in accord with the discussion that took place at oral argument of these motions. So ordered. Knapp, J. m/n	
Mar. 4-74	BEFORE KNAPP J. Jury trial begun,	
Mar. 5-74	Trial continued.	
Mar. 6-74	" "	
Mar. 7-74	" "	
Mar. 8-74	" " and concluded. Judge's Decision Reserved as to remaining issues. Jury verdict for deft.	
Mar. 12-74	Filed stip & order that action be dismissed with prejudice as against Martin Dwyer. Knapp, J.	

DATE	FILINGS—PROCEEDINGS	KNAPP, J.	AP RE EM RT
Mar. 20-74	Filed INTERIM OPINION #40478: The court requests that the parties attempt-after consultation with Messrs. Platt &, & Holzer to reach a stip as to whether or to what extent, plttf's could have avoided litigation by giving assurance of compliance with the ordinance & decree. If the parties are unable to stipulate, the court requests deft's to , consider making a motion for summary judgment/ Affidavits by Platt & Holzer are expressly invited upon any such , motion, etc. So ordered. Knapp, J. m/n		
Apr. 8-74	Filed plttf's offer of proof on damage items.		
Apr. 16-74	Filed affidavit of Howard Corning, Jr. in support of deft's, motion for summary judgment.		
Apr. 16-74	Filed deft's memorandum of law in support of motion to vacate, order granting partial summary judgment.		
Apr. 16-74	Filed deft's memorandum of law in support of motion for summary judgment.		
Apr. 22-74	Filed affidavit of Erwine Laverne in opposition to deft's, application.		
Apr. 22-74	Filed plttf's memorandum of law in opposition to deft's , motion for summary judgment.		
Apr. 25-74	Filed deft's reply memorandum of law in support their motion, for summary judgment.		
May. 23-74	Filed OPINION #40731: The plttf's complaint is dismissed. So ordered. Knapp, J. m/n		
Jun. 10-74	Filed plttf's notice of appeal to the USCA from order dismissing, plttf's complaint entered. 5-23-74. Mailed copy to, Judge Rose Guthrie Alexander.		
Jul. 1/74	Filed defts' notice of motion re: partial summary judgment.		
Jul. 1/74	Filed defts' memo. of law in support of motion to vacate the order granting partial summary judgment herein.		
Jul. 1/74	Filed suppl. memo. of law of defts in support of motion to vacate the order granting partial summary judgment.		
Jul. 1/74	Filed defts' reply memo. of law in support of their motion to vacate the order granting partial summary judgment.		
Jul. 1/74	Filed defts' memo. of law submitted in connection with the joint motion of the parties to determine whether plttfs. are legally entitled to recover for legal expenses paid by non-party corps.		



COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ERWINE LAVERNE and ESTELLE LAVERNE, :

Plaintiffs, :

-against- :

HOWARD J. CORNING, JR., Mayor; :  
HUTCHINSON DUBOSQUE, Deputy Mayor, :  
Police Commissioner and a Trustee; :  
ORIN LEACH, JOHN MACKAY and DOUGLAS :  
DESPARD, Trustees; MARTIN DWYER, :  
Chairman of the Planning Board; :  
HUGH JOHNSON, Building Inspector; and :  
EDWARD J. MEEHAN, Police Sergeant; :  
jointly and severally, and indivi- :  
dually and as respective officers as :  
stated of the Incorporated Village of :  
Laurel Hollow, :

Defendants. :  
-----X

COMPLAINT

Plaintiffs, complaining of the defendants by their  
attorneys, LUBELL AND LUBELL, respectfully show to this  
Court and allege:

AS AND FOR A FIRST CLAIM BY ERWINE LAVERNE:

NK 1. The jurisdiction of this Court is invoked  
under the Fourteenth Amendment of the United States Consti-  
tution and Title 28, United States Code, Sections 1331 and  
1343, and Title 42, United States Code, Sections 1981-1988.

NK 2. The matter in controversy exceeds the sum or  
value of \$10,000 exclusive of interest and costs.

NK 3. Upon information and belief, during all times  
A [herein mentioned defendants were citizens of the United  
States and residents of the State of New York. Plaintiffs  
are citizens of the United States and residents of the

of New York, and presently have their principal residence at 41 West 58th Street, County, City and State of New York.

*By failure to deny*

4. Upon information and belief, prior to July 24, 1962, and during the years 1962, 1963 and 1964 and at subsequent times not now known to plaintiffs, defendant HOWARD CORNING JR. (hereinafter referred to as "Corning") was the duly elected and authorized Mayor, defendant HUTCHINSON DUBOSQUE (hereinafter referred to as "Dubosque") was the duly authorized Deputy Mayor and Police Commissioner, defendant HUGH JOHNSON (hereinafter referred to as "Johnson") was the duly authorized and appointed Building Inspector, defendant MARTIN DWYER (hereinafter referred to as "Dwyer") was the duly authorized and appointed Chairman of the Planning Board, defendant EDWARD J. MEEHAN (hereinafter referred to as "Meehan") was a Sergeant of Police, the defendants DUBOSQUE, ORIN LEACH (hereinafter referred to as "Leach"), JOHN MACKAY (hereinafter referred to as "MacKay") and DOUGLAS DESPARD (hereinafter referred to as "Despard") were the duly elected and authorized Trustees, all of and for the Incorporated Village of Laurel Hollow, County of Nassau, State of New York.

D

5. Upon information and belief, during all times herein mentioned defendants and each of them were acting under color of the statutes, ordinances, regulations, customs and usages of the State of New York, County of Nassau, and of the Incorporated Village of Laurel Hollow.

D

6. The basis of the claims herein arises from acts of the defendants utilizing the power and color of state authority to deprive plaintiffs of their Constitutional rights to be secure against unlawful searches and seizures, to be protected against cruel and unusual punishment and to

be guaranteed due process of law and equal protection under the Fourteenth Amendment to the United States Constitution.

NK 7. Prior to July 24, 1962, plaintiffs had gained an international reputation as designers and had been the recipients of many awards and citations for their creativity and artistry in the field of industrial and allied designs.

D 8. For many years prior to July 24, 1962 the plaintiffs, who were and are husband and wife, had used and been occupants and tenants of certain lands and premises on Laurel Hollow Road in the said Village, for the purpose of their residence and family home.

NK 9. During all the times mentioned herein the plaintiff Estelle Laverne was the owner of all of the stock of Laverne Originals, Inc., also known as Laverne, Inc. and now known as Furniture, Textiles and Wallcoverings, Inc., the record owner of said premises, and both plaintiffs were at all such times the principal officers and directors of said corporation.

D 10. On or about the 24th day of July, 1962, the defendant Johnson forced entry into the aforesaid premises occupied by the plaintiffs and searched the rooms of the said premises.

D 11. On or about the 18th day of October, 1962, the defendants Johnson, Corning and Dubosque forced entry into the premises occupied by the plaintiffs, searched the rooms of the said premises and took photographs.

D 12. On or about the 17th day of December, 1962, the defendant Johnson accompanied by a policeman forced entry into the premises occupied by the plaintiffs, searched the rooms of the premises and took photographs of said premises.

D 13. Upon information and belief, during the years 1962 and 1963, one or more of the defendants forced entry into the premises of the plaintiffs upon dates other than those set forth in paragraphs 10, 11 and 12 of this complaint and upon such other occasions, the exact dates of which are presently unknown to plaintiffs, searched the rooms of said premises and took pictures.

D 14. Upon information and belief, the acts alleged in paragraphs 10, 11 and 12 above were committed by the defendant Johnson in his capacity as the Building Inspector of the said Village, were committed by the defendant Corning in his capacity as Mayor of the said Village, and were committed by defendant Dubosque in his dual capacity as Deputy Mayor and Police Commissioner of the said Village.

D 15. Upon information and belief, the acts alleged in paragraphs 10, 11, 12 and 13 were committed upon the instructions of the defendants Dubosque, Leach, MacKay and Despard in their capacity as Trustees of the Incorporated Village of Laurel Hollow, and the said aforesaid acts were committed with the knowledge and consent of the said defendants Dubosque, Leach, MacKay and Despard.

D 16. Upon information and belief, none of the defendants at any of the times mentioned herein, and more particularly at the time and place of the events alleged in paragraphs 10, 11, 12 and 13 above, had in his possession any warrant issued by any judge, court or magistrate authorizing a search of the aforesaid premises nor had any warrants in fact been issued by any judge, court or magistrate for the said search.

D 17. On or about the 10th day of June, 1964 the Court of Appeals of the State of New York found that the

aforescribed activities of defendants alleged in paragraphs 10, 11 and 12 constituted unlawful searches of the plaintiffs' home and had deprived the plaintiffs of their constitutional rights under the Fourteenth Amendment to the United States Constitution to be protected from unreasonable searches and seizures.

D 18. Subsequent to the aforescribed activities of the defendants alleged in paragraphs 10, 11 and 12, said Village instituted proceedings against the plaintiffs seeking to hold them guilty of contempt in having disobeyed an injunction order which was theretofore obtained against the plaintiffs in 1953. ✓ On or about the 27th day of December, 1962 an order was entered which found the plaintiffs herein guilty of contempt and fined them \$250.

D 19. Subsequent thereto the Village instituted a further proceeding to find the plaintiffs guilty of contempt and on or about the 19th day of April, 1963 the plaintiffs were again found guilty of contempt, fined \$250 and directed further to pay an additional sum of \$300 for the said Village's legal expenses and disbursements.

D 20. Subsequent to the acts of the defendants alleged in paragraphs 10, 11 and 12, the Village instituted criminal proceedings against the plaintiff Erwine Laverne upon the grounds that he had violated the existing building zone ordinance of the Village; that as a result of the said criminal proceedings Erwine Laverne was adjudged guilty on or about the 6th day of April, 1963 by the Court of Special Sessions.

21. Subsequent to the acts of the defendants alleged in paragraphs 10, 11 and 12, the Village, on or about the 6th day of March, 1963, commenced a civil action

against the plaintiffs to recover a penalty of \$100.00 per day for each day from June 21, 1950 through March 6, 1953; that said action sought to recover penalties totaling \$787,900.00.

D 22. Upon information and belief, the Village instituted the contempt proceedings heretofore described in paragraphs 18 and 19, the criminal action against the plaintiff Erwine Laverne heretofore described in paragraph 20, and the civil action for penalties heretofore described in paragraph 21 upon the instructions and directions of the defendants Corning, Dubosque, Leach, MacKay and Despard, who were acting in their capacities as the Mayor and Trustees, and of Dubosque acting in his capacity as Deputy Mayor and Police Commissioner, and upon the urgings and recommendations of defendant Johnson acting in his capacity as Building Inspector of the said Village, of defendant Dwyer acting in his capacity as Chairman of the Planning Board of the said Village, and of defendant Meehan acting in his capacity as Police Sergeant.

D 23. All of the foregoing contempt, criminal and civil penalty proceedings were the direct result of the forcible entries alleged in paragraphs 10, 11 and 12 and each of said proceedings could not and would not have been brought if the said forcible entries had not occurred.

D 24. On or about the 12th day of July, 1965 the Appellate Division of the New York Supreme Court, Second Judicial Department, reversed the orders finding the plaintiffs guilty of contempt in the proceedings hereinabove described in paragraphs 18 and 19 and denied the motions to punish for contempt; the said Appellate Division found that the evidence utilized in the aforescribed contempt pro-

ceedings was obtained by the defendant Johnson and other officials by entry into the premises and a search without a search warrant as hereinbefore described in paragraphs 10, 11 and 12, and that such search was illegal and that the Village could not utilize such unlawfully obtained evidence in said contempt proceedings.

D 25. The use of the unlawfully obtained evidence in the contempt proceedings as hereinbefore described deprived the plaintiffs of their rights secured by the Fourteenth Amendment to the United States Constitution to be protected against unreasonable searches and seizures.

D 26. The aforesaid criminal proceeding instituted against the plaintiff Erwine Laverne hereinbefore described in paragraph 20, which had resulted in a judgment of conviction, was reversed by the Court of Appeals of the State of New York on the 10th day of June, 1964 as hereinbefore described in paragraph 17. The Court of Appeals found that the aforesaid criminal conviction must be reversed since it was the result of an unlawful search of plaintiffs' home.

D 27. The use of the unlawfully obtained evidence in the criminal proceeding as hereinbefore described deprived the plaintiffs of their rights secured by the Fourteenth Amendment to the United States Constitution to be protected against unreasonable searches and seizures.

D 28. On the 12th day of July, 1965 the Appellate Division of the Supreme Court, Second Judicial Department, reversed the order of the Supreme Court, Nassau County, in the action to recover penalties hereinbefore described in paragraph 21, which order had granted partial summary judgment to the Village penalizing the plaintiffs herein for violations of the building zone ordinance on three specific

dates; the said Appellate Division found that the said award of partial summary judgment had been based upon the affidavit of defendant Johnson as Village Building Inspector regarding information obtained by him in the illegal search of plaintiffs' premises as hereinbefore described in paragraphs 10, 11 and 12 and that the action for a penalty was within the constitutional rule excluding evidence unlawfully obtained and that this rule required that the partial summary judgment be reversed since, without the unlawful evidence, there was no adequate proof that the ordinance had been violated.

29. The use of the unlawfully obtained evidence in the penalty proceeding as hereinbefore described deprived the plaintiffs of their rights secured by the Fourteenth Amendment to the United States Constitution to be protected against unreasonable searches and seizures.

30. The aforescribed proceedings instituted by the Village to punish the plaintiffs for contempt, to find the plaintiff Erwine Laverne criminally guilty of violation of the ordinance and to seek civil penalties at the rate of \$100.00 a day for each day of violation were the direct result of the unconstitutional search and seizure of plaintiffs' premises heretofore described.

31. The illegal search of plaintiffs' premises heretofore described resulting in depriving plaintiffs of their constitutional right to be secure from unreasonable searches and seizures were instructed by the defendants Corning, Dubosque, Leach, MacKay and Despard, acting in their capacity as Mayor and Trustees, to be done by defendants Johnson, Dubosque and Meehan, acting in their capacities as Building Inspector, Police Commissioner and Police

Sergeant respectively, for the purpose and with the intent of obtaining, under the color of State statute, ordinance, regulation, custom and usage, information for the purposes of instituting criminal, contempt and penalty proceedings and that said criminal, contempt and penalty proceedings were in fact instituted by the defendants upon the basis of the illegal searches.

D 32. The aforescribed acts of the defendants in prosecuting the aforescribed actions to punish the plaintiffs for contempt, to fine the plaintiffs at the rate of \$100.00 a day for each day of alleged violation of the ordinance and to find plaintiff criminally guilty of a violation of the ordinance constitute cruel and unusual punishment of plaintiffs in violation of the Fourteenth Amendment to the United States Constitution.

D 33. The aforesaid acts of the defendants constituted a violation of the Constitution and laws of the United States of America, in that the plaintiffs, and each of them, were deprived by the defendants, and each of them, of their right to be secure in their home against arbitrary and unreasonable searches and seizures, of their right not to be subject to cruel and unusual punishment and of their right not to be deprived of their lives, liberties and property, without due process of law, all in violation of the Fourteenth Amendment to the Constitution of the United States and Title 28, United States Code, Section 1343 and Title 42, United States Code, Section 1983.

34. As a direct and proximate result of the aforesaid acts of the defendants and each of them, plaintiff Erwine Laverne

(a) has been and continues to be prevented

and deterred from attending to his usual occupation and from continuing in the former progress of his creative activities;

(b) has been and continues to be greatly injured in his reputation, good name and credit among his business associated, business acquaintances, persons in the field of industrial design, his personal friends and his social acquaintances, and among the public generally;

(c) was and continues to be considerably harassed and annoyed;

(d) was and continues to be put to substantial expense, including legal expenses, counsel fees and otherwise, in defending against the aforesaid acts of the defendants;

(e) has suffered and continues to suffer serious damage and impairment to his creativity and artistic achievement;

(f) has suffered and continues to suffer great mental and nervous distress and humiliation and has sustained emotional disturbances; that the aforesaid damages and injuries to plaintiff and his creativity and reputation are permanent and the aforesaid harassment and expenses continue to this date.

D 35. All of the aforesaid acts of defendants were done wilfully and maliciously and with a wanton disregard of the rights of the plaintiffs.

D 35. By reason of the foregoing, plaintiff ERWINE LAVERNE incurred losses and damages of \$125,000.00, resulting from being deterred from attending to his usual

occupation and creative activities; of \$120,000.00 from injury to his reputation, good name and credit; of \$112,000.00 from harassment and annoyance; of \$20,225.00 for legal expenses and counsel fees; of \$160,000.00 for impairment to his creativity and artistic achievement; and of \$112,775.00 from mental and nervous distress and emotional disturbances.

D 37. By reason of the foregoing, plaintiff ERWINE LAVERNE has been damaged in the sum of \$650,000.00 and claims exemplary damages of \$650,000.00.

AS AND FOR A FIRST CLAIM BY ESTELLE LAVERNE:

[Same] 38. Plaintiff ESTELLE LAVERNE repeats and re-alleges each and every allegation contained in paragraphs numbered "1" through "33", inclusive and "35" of this complaint as if fully and completely set forth herein.

D 39. As a direct and proximate result of the aforesaid acts of the defendants, and each of them, plaintiff ESTELLE LAVERNE

(a) has been prevented and deterred from attending to her usual occupation and from continuing in the former progress of her creative activities;

(b) has been greatly injured in her reputation, good name and credit among her business associates, business acquaintances, persons in the field of industrial design, her personal friends and her social acquaintances;

(c) was and continues to be considerably harassed and annoyed;

(d) was put to substantial expense, including legal expenses, counsel fees and otherwise, in defending against the aforesaid acts of the defendants;

(e) has suffered and continues to suffer serious damage and impairment to her creativity and artistic achievement;

(f) has suffered great mental, nervous and bodily distress and humiliation, and has sustained emotional and neurological disturbances with residual physical manifestations; that the aforesaid damages and injuries to plaintiff and her business and reputation are permanent, and the aforesaid harassment and expenses continue to this date.

D 40. By reason of the foregoing, plaintiff ESTELLE LAVERNE incurred losses and damages of \$100,000.00 resulting from being deterred from attending to her usual business and creative activities; of \$100,000.00 from injury to her reputation, good name and credit; of \$100,000.00 from harassment and annoyance; of \$18,000.00 for legal expenses and counsel fees; of \$140,000.00 for impairment to her creativity and artistic achievement; and of \$192,000.00 from mental, nervous and bodily distress, emotional and neurological disturbances and residual physical manifestations.

D 41. By reason of the foregoing, plaintiff ESTELLE LAVERNE has been damages in the sum of \$650,000.00 and claims exemplary damages in the sum of \$650,000.00.

AS AND FOR A SECOND CLAIM BY ERWINE LAVERNE:

[one] 42. Plaintiff ERWINE LAVERNE repeats and re-alleges each and every allegation contained in paragraphs numbered "1" through "36" inclusive of this complaint as if fully and completely set forth herein.

D 43. On or prior to the 24th day of July, 1988 in the State of New York, the defendants and each of them, conspired to deprive the plaintiffs of their rights provided under the Constitution and laws of the United States, and particularly those rights provided under Amendment Fourteenth to the United States Constitution and Title 42, U.S.C. 1981-1988, by use of the color of State statute, ordinance, regulation, custom and usage and through use of State facilities and organs and, in connection therewith, the said defendants conspired to impede, hinder, obstruct and defeat the due course and due process of law and justice in the State of New York, to deny the plaintiffs the equal protections of the law and to deprive plaintiffs of the rights, privileges and immunities secured by the Constitution and laws of the United States extended to citizens of the United States.

D 44. In pursuance of said objectives and as part of said conspiracy, the defendants treated and caused plaintiffs to be treated as a separate class of citizens not entitled to the benefits of search warrants nor to the rights or privacy secured by the United States Constitution nor to the right to be free of arbitrary and unreasonable searches and seizures, subjected and caused plaintiffs to be subjected to cruel and inhuman punishment and to a deprivation of due process of law and a denial of the due course of justice through the institution of criminal, quasi-criminal and contempt proceedings as hereinbefore alleged and the use therein of illegally and unconstitutionally obtained evidence.

D 45. In furtherance of the object of said conspiracy, one or more of said defendants did do and caused to be done the acts set forth in paragraphs numbered "10" through "13" inclusive and "18" through "20" inclusive and "21" of this complaint and in violation of Title 42, United States Code, Section 1985(2) and (3) did thereby injure plaintiff ERWINE LAVERNE in his person and property as set forth in paragraphs "34" and "36" of the complaint, and deprive him of having and exercising his rights and privileges under the Constitution and laws of the United States, as set forth in paragraph "33" of this complaint.

D 46. By reason of the foregoing, plaintiff ERWINE LAVERNE has been damaged in the sum of \$650,000.00 and claims exemplary damages in the sum of \$650,000.00.

AS AND FOR A SECOND CLAIM BY ESTELLE LAVERNE:

[Same] 47. Plaintiff ESTELLE LAVERNE repeats and re-alleges each and every allegation in paragraphs numbered "1" through "33" inclusive and "35", "43" and "44" of this complaint, as if fully and completely set forth herein.

D 48. In furtherance of the object of said conspiracy, one or more of said defendants did do or cause to be done the acts set forth in paragraphs numbered "10" through "13" inclusive, and "18" through "20" inclusive and "21" of this complaint and in violation of Title 42, United States Code, Section 1985(2) and (3) did thereby injure plaintiff ESTELLE LAVERNE in her person and property as set forth in paragraphs "39" and "40" of this complaint, and deprive her of having and exercising her rights and privileges under the Constitution and laws of the United

States as set forth in paragraph "33" of this complaint.

D 49. By reason of the foregoing, plaintiff ESTELLE LAVERNE has been damaged in the sum of \$650,000.00 and claims exemplary damages in the sum of \$650,000.00.

WHEREFORE, judgment is demanded against the defendants by plaintiff ERWINE LAVERNE on his First and Second Causes of Action in the sum of \$650,000.00 as compensatory damages and in the sum of \$650,000.00 as exemplary damages, with interest thereon; by plaintiff ESTELLE LAVERNE on her First and Second Causes of Action in the sum of \$650,000.00 as compensatory damages and in the sum of \$650,000.00 as exemplary damages, with interest thereon; together with the costs and disbursements of this action, including fair and reasonable allowances for counsel fees and other lawful expenses.

LUBELL AND LUBELL  
Attorneys for Plaintiffs

By: Jonathan W. Lubell,  
A Partner  
Office & P.O. Address  
103 Park Avenue  
New York, New York 10017  
Tel. 212-889-5290

ANSWER

COURT OF CLERKS OF THE COUNTY OF NASSAU  
JUDICIAL OFFICE OF NASSAU COUNTY

CIVIL ACTION

FRANK H. LAWRENCE and ESTELLE LAWRENCE,

File No. 28301-7

Plaintiffs

against-

ANSWER

EDWARD J. F. O'NEILL, JR., Mayor; HUTCHINSON  
DUDMAN, Deputy Mayor, Police Commissioner  
and a member of the BOARD, JOHN LACKEY and  
ROBERT D. DEBRAED, Trustees; MARTIN Dwyer,  
Chairman of the Planning Board; ALVIN  
J. O'NEILL, Councilman; and EDWARD J.  
O'NEILL, Police Sergeant; jointly and severally,  
and as such and as respective officers as  
stated of the Incorporated Village of Laurel  
Hollow,

Defendants.

The defendants, appearing herein by their attorney,  
MORRIS A. SCHLESINGER, County Attorney of Nassau County, as and  
their answer to the complaint of the plaintiffs, respectfully  
allege as follows:

ANSWERING THE FIRST ALLEGED CLAIM  
BY FRANK LAWRENCE, DEFENDANTS ALLEGE:

FIRST: Deny that they have any knowledge or infor-  
mation sufficient to form a belief as to each and every allegation  
contained in Paragraphs "1", "2", "7" and "9" of the complaint.

SECOND: Deny that they have any knowledge or infor-  
mation sufficient to form a belief as to each and every allegation

contained in paragraph "3" of the complaint, except admit that the defendants are citizens of the United States and residents of the State of New York.

THIRD: The allegations contained in Paragraph "5" of the complaint, having reference to other paragraphs of the complaint, which defendants will deny, defendants do hereby deny each and every allegation contained in Paragraph "5" of the complaint.

FOURTH: Deny each and every allegation contained in Paragraphs "6", "8", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", and "37" of the complaint.

**ANSWERING THE FIRST ALLEGED CLAIM  
BY ESTELLE LAVERNE, DEFENDANTS ALLEGE:**

FIFTH: Repeat and reallege each and every denial of the paragraphs referred to in Paragraph "39" of the complaint, with the same force and effect as if herein set forth at length.

SIXTH: Deny each and every allegation contained in Paragraphs "39", "40" and "41" of the complaint.

**ANSWERING THE SECOND ALLEGED CLAIM  
BY ERNEST LAVERNE, DEFENDANTS ALLEGE:**

SEVENTH: Repeat and reallege each and every denial of the paragraphs referred to in Paragraph "42" of the complaint.

with the same force and effect as if herein set forth at length.

EIGHTH: Deny each and every allegation contained in Paragraphs "43", "44", "45" and "46" of the complaint.

ANSWERING THE SECOND ALLEGED CLAIM  
BY ESTELLE LAVERNE, DEFENDANTS ALLEGE:

NINTH: Repeat and reallege each and every denial of the paragraphs referred to in Paragraph "47" of the complaint, with the same force and effect as if herein set forth at length.

TENTH: Deny each and every allegation contained in Paragraphs "48" and "49" of the complaint.

AS AND FOR A FIRST, SEPARATE AND  
DISTINCT DEFENSE, DEFENDANTS ALLEGE:

ELEVENTH: That at all of the times mentioned in plaintiffs' complaint, the defendants were officers and/or agents of the Incorporated Village of Laurel Hollow.

TWELFTH: That at all of the times hereinafter mentioned, the Incorporated Village of Laurel Hollow was and still is a municipal corporation duly organized and existing under and by virtue of the Village Law of the State of New York.

THIRTEENTH: That at all of the times mentioned in the complaint, the alleged wrongful acts were alleged to have been committed by the defendants in their individual and representative capacities.

FOURTEENTH: That any act committed by the defendants, in their representative capacities with regard to the prosecution and conviction of the plaintiff for violation of the Building Code Ordinance of the Incorporated Village of Laurel Hollow, was committed in the exercise of their respective duties as officers and agents of said Village and with the consent and permission of said Village.

FIFTEENTH: That pursuant to provisions of Section 341, Subdivision 1 of the Village Law and Section 50-e of the General Municipal Law, a Notice of Claim was required to be served upon the defendants and/or upon the Incorporated Village of Laurel Hollow, either personally or by registered mail within ninety (90) days after the alleged claim allegedly arises.

SIXTEENTH: That plaintiffs have failed to serve the said Notice of Claim within the time mentioned and in the manner prescribed by said statutes aforementioned, and their complaint fails to allege the service of such Notice of Claim.

SEVENTEENTH: That by reason of the foregoing, the actions of the plaintiffs were improperly instituted.

AS AND FOR A SECOND, SEPARATE AND  
DISTINCT REASON, DEFENDANTS ALLEGE:

EIGHTEENTH: Defendants repeat and reallege each and every allegation contained in Paragraphs "ELEVENTH", "TWELFTH", "THIRTEENTH", "FOURTEENTH", "FIFTEENTH" and "SIXTEENTH" of this

answer, with the same force and effect as if herein set forth at length.

NINETEENTH: That pursuant to the provisions of Section 341, subdivision 2 of the Village Law, the action herein was required to be commenced pursuant to the provisions of Section 50-i of the General Municipal Law, within one (1) year and ninety (90) days after the happening of the event upon which the claim is based.

TWENTIETH: That this action was not commenced against said defendants within one (1) year and ninety (90) days after the happening of the event upon which the claim is based in accordance with the provisions of Section 341 (2) of the Village Law and Section 50-i of the General Municipal Law, and this action is barred against each of the defendants by the Statute of Limitations.

TWENTY FIRST: That this action is further barred against each of the defendants by Section 214, subdivision (2) of the Civil Practice Law and Rules, in that said action was not instituted within three years from the date of the accrual of plaintiffs' alleged causes of action.

AS AND FOR A THIRD, SEPARATE AND  
DISTINCT DEFENSE, DEFENDANTS ALLEGE:

TWENTY SECOND: That at all of the times hereinafter mentioned, the defendants occupied the official positions in the

Village of Laurel Hollow, as mentioned and described in Paragraph "4" of the complaint.

TWENTY-THIRD: That at all of the times hereinafter mentioned, pursuant to the provisions of Section 80 of the Village Law, it was the duty of the defendant, HOWARD CORNING, JR., as Mayor, to see that the ordinances were enforced, to cause all offenses created thereby to be prosecuted, to exercise supervision over the conduct of the police and other subordinate officers of the village and to recommend to the board of trustees such measures as he may think necessary.

TWENTY-FOURTH: That at all of the times hereinafter mentioned, pursuant to the provisions of Section 90-a of the Village Law, a Building Zone Ordinance was duly adopted by the Board of Trustees of the Incorporated Village of Laurel Hollow on August 16, 1960, which was further amended by said Board of Trustees on August 1, 1961.

TWENTY-FIFTH: That at all of the times hereinafter mentioned, pursuant to the provisions of Section 10.1 of the said Building Zone Ordinance, it was the duty of the defendant, HUGH JOHNSON, as Building Inspector, and he was given authority by said Section 10.1 to enforce the provisions of said Building Zone Ordinance and in the discharge of his duties he had authority to enter any building or premises at any reasonable hour.

TWENTY SIXTH: That at all of the times hereinafter mentioned, the acts of the defendant, HOWARD CORNING, JR., in directing the enforcement of the Building Zone Ordinance, in causing the offense and violation thereof by the plaintiff to be prosecuted and in exercising supervision over the defendant, ROGER JOHNSON, in the enforcement of the said ordinance and the investigation of the violation committed by the plaintiff, were performed by the said defendant, HOWARD CORNING, JR., in the exercise and discharge of his quasi-judicial functions and in the discharge of his duties, and are absolutely privileged.

TWENTY-SEVENTH: That each and every act of each defendant, in any way connected with the investigation of the violations committed by the plaintiffs, or by either of them, as it related to the Village Building Code Ordinance, were quasi judicial, were done in good faith in the proper exercise and discharge of their quasi-judicial functions and in the discharge of their respective official duties.

AS AND FOR A FOURTH, SEPARATE AND  
DISTINCT DEFENSE, DEFENDANTS ALLEGE  
UPON INFORMATION AND BELIEF AS FOLLOWS:

TWENTY EIGHTH: That at all of the times herein mentioned and at all of the times mentioned in the complaint, the property on Laurel Hollow Road in the Village of Laurel Hollow, was owned by LAVERNE ORIGINALS, INC..

THAT subsequent to July 23, 1947, the said premises were not used by plaintiffs for the purpose of their residence and family home.

THIRTIETH: That prior to the 24th day of July, 1947, by decision of the Appellate Division of the Supreme Court (200 App. Div. 744) affirmed by the New York State Court of Appeals (207 N.Y. 744), plaintiffs and/or the corporate owner and occupant of said aforementioned premises, were enjoined from using said premises for commercial and manufacturing purposes, as set forth in the decision of the Appellate Division.

THIRTY-FIRST: That neither plaintiff was present on the occasions referred to and alleged in Paragraphs "10", "11", "12" and "13" of the complaint.

THIRTY-SECOND: That the plaintiffs were not deprived of any rights by any act or acts of any of the defendants, nor were any civil rights of either plaintiff breached or violated by the alleged acts of the defendants, as alleged in the complaint.

AS AND FOR A FURTHER, SEPARATE AND  
DISTINCT ORDERING, DEFENDANTS ALLEGED:

THIRTY-THIRD: That the matters in controversy between the parties and all of the material allegations of the complaint have previously been submitted to the Supreme Court

of the State of New York.

THIRTY-FOUR: That the plaintiffs above named commenced action against the officials of the Incorporated Village of Laurel Hollow on the same material facts, as herein alleged, in the Supreme Court of the State of New York, County of Nassau; that thereafter the defendants duly recovered judgment against the plaintiffs in said actions, upon the merits.

WHEREFORE, the defendants demand judgment dismissing the complaint of the plaintiffs, together with the costs and disbursements of this action.

MORRIS H. SCHLEIDER  
County Attorney of Nassau County  
Attorney for Defendants

By: 

LOUIS SCHULTZ  
Senior Deputy County Attorney  
Office & P.O. Address  
Nassau County Executive Building  
Mineola, New York, 11501

Tel. 516 PI 2 - 3000

OPINIONS OF JUDGE TENNEY  
DATED JULY 6, 1970 AND AUGUST 20, 1970

search, are likewise illegal and cannot stand. Accordingly, it is the

Order, judgment and decree of this Court that the conviction of Frank Piazzola on April 25, 1968, and the conviction of Terrance Marinshaw on April 26, 1968, both in the Circuit Court of Pike County, Alabama, which convictions form the basis for the present incarceration of each, be and each of said convictions is hereby set aside. It is further

Ordered that Frank Piazzola and Terrance Marinshaw be released immediately by the State authorities now holding them in custody pursuant to said convictions.



Lewine LAVERNE and Estelle Laverne,  
Plaintiffs,

v.

Howard J. CORNING, Jr., Mayor, Hutchinson Dubosque, Deputy Mayor, Police Commissioner, and a Trustee, Orin Leach, John Mackay and Douglas Despard, Trustees, Martin Dwyer, Chairman of the Planning Board, Hugh Johnson, Building Inspector, and Edward J. Meehan, Police Sergeant, jointly and severally and individually and as respective officers as stated of the Incorporated Village of Laurel Hollow, Defendants.

No. 67 Civ. 2830.

United States District Court,  
S. D. New York.

July 6, 1970.

Supplemental Memorandum  
Aug. 20, 1970.

Action commenced under Federal Civil Rights Act by owners of art studio against officers of village to recover compensatory and punitive damages for deprivation of owners' constitutionally protected right to be free from unreasonable searches and seizures.

Owners moved for summary judgment on issue of officers' liability for compensatory damages. By cross motion, officers also moved for summary judgment. The District Court, Tenney, J., held that uninvited entrances by officers of village into art studio located in village and warrantless searches and seizures conducted therein deprived owners of studio of their right to be free from unconstitutional searches and seizures, and was redressable under the Federal Civil Rights Act.

Plaintiffs' motion granted, and defendants' motion denied.

#### 1. Civil Rights ⇐1

##### Constitutional Law ⇐319

Guarantees against unreasonable searches and seizures and against submission into evidence of unlawfully seized evidence are rights protected by both the Fourteenth Amendment and the Federal Civil Rights Act. 42 U.S.C.A. § 1981 et seq.; U.S.C.A. Const. Amend. 14.

#### 2. Civil Rights ⇐13

As long as a defendant who abridges a plaintiff's constitutional rights acts pursuant to a statute or local law which empowers him to commit the wrongful act, an action under the Federal Civil Rights statute is established. 42 U.S.C.A. § 1981 et seq.

#### 3. Searches and Seizures ⇐7(28)

Even if one of agents of owners of art studio allowed three of officers of village to enter premises after being informed as to who they were, this was merely submission to power of public authority and not a consent. 42 U.S.C.A. § 1981 et seq.

#### 4. Civil Rights ⇐1

##### Searches and Seizures ⇐7(10)

Uninvited entrances by officers of village into art studio located in village and warrantless searches and seizures conducted therein deprived owners of studio of their right to be free from unconstitutional searches and seizures,

and was redressable under the Federal Civil Rights Act. 42 U.S.C.A. § 1981 et seq.

#### 5. Limitation of Actions ⇨34(1)

Action commenced under Federal Civil Rights Act by owners of art studio against officers of village to recover compensatory damages for deprivation of owners' constitutionally protected right to be free from unreasonable searches and seizures was governed by New York statute of limitations applicable to actions seeking recovery upon a liability created by statute, rather than by statute of limitations applicable to actions to recover damages for an injury to property. CPLR N.Y. 214, subd. 2, 214, subd. 4, 218(b).

#### 6. Civil Rights ⇨13

Good faith was not a valid defense to action commenced under Federal Civil Rights Act by owners of art studio against officers of village to recover compensatory damages for deprivation of owners' constitutionally protected right to be free from unreasonable searches and seizures. 42 U.S.C.A. § 1981 et seq.

#### 7. Municipal Corporations ⇨741(1)

Under New York law, when there exists no statutory duty requiring a municipality to indemnify an officer for his allegedly wrongful conduct, there is no necessity for service of a notice of claim upon that municipality as long as it is not made a party to the action. Village Law N.Y. § 341, subd. 1.

#### 8. States ⇨4.11, 4.13

Prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common-law rules.

#### 9. Civil Rights ⇨13

Failure of owners of art studio to comply with New York statute relating to notice of claim against municipality was no defense to action commenced under Federal Civil Rights Act by owners of art studio against officers of village to recover compensatory damages for deprivation of owners' constitu-

tionally protected right to be free from unreasonable searches and seizures. 42 U.S.C.A. § 1981 et seq.; Village Law N.Y. § 341, subd. 1; General Municipal Law N.Y. §§ 50-e, 50-e, subd. 1.

#### 10. Judgment ⇨828(3.37)

State court judgment in prior action by one of owners of art studio against two of officers of village to recover for alleged conspiracy to prosecute owner and enforce him to leave village was not *res judicata* as to action commenced under Federal Civil Rights Act by owners of art studio against officers of village to recover compensatory damages for deprivation of owners' constitutionally protected right to be free from unreasonable searches and seizures. 42 U.S.C.A. § 1981 et seq.

#### Supplemental Memorandum

#### 11. Courts ⇨405(12.1)

Request by officers of village for permission to appeal from district court's interlocutory decision granting owners of art studio summary judgment on issue of officers' liability for compensatory damages for deprivation of owners' constitutionally protected right to be free from unreasonable searches and seizures would be denied, because of lack of substantial ground for a difference of opinion and because there was little reason to believe that permitting an appeal from district court's decisions would materially advance ultimate termination of litigation. 28 U.S.C.A. § 1292(b); U.S.C.A. Const. Amend. 14; 42 U.S.C.A. § 1981 et seq.

Lubell, Lubell, Fine & Schaap, New York City, for plaintiffs; Jonathan W. Lubell and Stephen L. Fine, New York City, of counsel.

Morris H. Schneider, County Atty. of Nassau County, N. Y., for defendants; Gerrold N. Cohen, Deputy County Atty. of counsel.

TENNEY, District Judge.

This action commenced by plaintiffs Erwine and Estelle Laverne under the

Federal Civil Rights Act, 42 U.S.C. § 1981 et seq., alleges in two separate counts on behalf of the plaintiff husband and wife, respectively, that on three specified dates in 1962 the defendants, while acting in their official capacity as officers of the Incorporated Village of Laurel Hollow (hereinafter referred to as the "Village"), unlawfully entered upon plaintiffs' premises and conducted unlawful searches and seizures thereon in violation of plaintiffs' constitutional rights protected under the Fourth and Fourteenth Amendments to the Constitution. In two additional counts (not the subject of the within motion) plaintiffs further allege that the same defendants conspired to deprive plaintiffs of these constitutional rights. Predicated upon the above allegations, compensatory and punitive damages are sought.

Pursuant to Fed.R.Civ.P. 56, plaintiffs now move for summary judgment, interlocutory in character, solely on the issue of defendants' liability to them for compensatory damages on the first two counts of their complaint.

By cross-notice of motion, dated April 8, 1970, defendants also move for summary judgment.

There is apparently no dispute as to the following facts:

Each defendant is an officer of the Village, and at all times relevant herein plaintiffs resided and maintained an art studio on premises located in the Village. On July 24, October 18 and December 17, 1962, one or more of the defendants, acting as an officer of the Village and pursuant to public authority, entered plaintiffs' premises without the consent of either plaintiff and conducted a warrantless search of the premises. On two of these occasions, photographs of the interior of the premises were also taken. On October 18 and December 17, each defendant acted with the knowledge of the others and pursuant to his local authority. The fruits of these uninvited entries and warrantless searches were used in a subsequent criminal prosecution against the plaintiff husband, and

in a quasi-criminal and civil proceeding against both plaintiffs for their alleged violation of a prior injunction enjoining them from further violating one of the Village's building zone ordinances. Based upon a specific finding by the New York Court of Appeals that the searches and seizures were unlawful, the plaintiffs ultimately succeeded in each of the three above-mentioned proceedings. *People v. Laverne*, 14 N.Y.2d 304, 251 N.Y.S.2d 452, 200 N.E.2d 441 (1964); *Incorporated Village of Laurel Hollow v. Laverne Originals, Inc.*, 24 App.Div. 2d 616, 262 N.Y.S.2d 625 (1965).

Plaintiffs admit that no Notice of Claim has been served upon the Village or the defendants, and that the action was not commenced within three years after the occurrence of the events upon which the claim is based.

In view of the sixteen years of hostile litigation between the plaintiffs herein and the Village, a brief chronological summary of some of these lawsuits should be useful in illuminating the present posture of the instant suit.

In 1954, the Appellate Division of the Supreme Court of the State of New York modified and affirmed a judgment below enjoining plaintiffs from using their premises in violation of Section 5.0 of the Village's Building Zone Ordinance. *Incorporated Village of Laurel Hollow v. Laverne Originals, Inc.*, 283 App.Div. 795, 128 N.Y.S.2d 326, aff'd, 307 N.Y. 784, 121 N.E.2d 618 (1954).

In 1963, Mr. Laverne was criminally prosecuted and convicted, and Mr. and Mrs. Laverne were adjudged in contempt of court and fined for violating the 1954 injunction. See *Incorporated Village of Laurel Hollow v. Laverne, Inc.*, *supra*.

In 1964, the New York Court of Appeals reversed the criminal convictions, specifically finding the warrantless searches and seizures unlawful and in violation of plaintiffs' constitutional rights protected by the Fourth and Fourteenth Amendments. *People v. Laverne*, *supra*.

The following year the judgments fining plaintiffs and holding them in contempt of court were reversed based upon the Court of Appeal's finding noted above. *Incorporated Village of Laurel Hollow v. Laverne, Inc., supra*.

[1] It is fundamental that the guarantees against unreasonable searches and seizures and against the submission into evidence of unlawfully seized evidence are rights protected by both the Fourteenth Amendment and the Federal Civil Rights Act. *Camara v. Municipal Court*, 387 U.S. 522, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967); *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961); *People v. Laverne, supra*.

[2] Further, it is well established that as long as a defendant who abridges a plaintiff's constitutional right acts pursuant to a state or local law which empowers him to commit the wrongful act, an action under the Federal Civil Rights Statute is established. *Monroe v. Pape, supra*; see *United States v. Williams*, 341 U.S. 70, 71 S.Ct. 581, 95 L.Ed. 758 (1951); *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368 (1941).

Section 1983 of Title 42 of the United States Code, in pertinent part, provides that "Every person who, under color of \* \* \* [state law] \* \* \* subjects, or causes to be subjected, any citizen of the United States \* \* \* to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured." As indicated previously, it is not disputed that the entries into plaintiffs' premises were pursuant to local authority.

Defendants urge that the uninvited entrances into plaintiffs' premises and the warrantless searches and seizures conducted thereon did no violence to plaintiffs' constitutional rights and therefore are not actionable. In support of this contention, they argue that their conduct was constitutionally permissible at the time these acts were committed.

[3] The Court in *People v. Laverne, supra*, however, came to an opposite conclusion after specifically finding that the entries were unconsented to and by force of public authority. Even assuming, as defendants suggest, that one of plaintiffs' agents allowed three of the defendants to enter after being informed as to who they were, this is merely a submission to the power of public authority and not a consent. *Johnson v. United States*, 333 U.S. 10, 13, 68 S.Ct. 367, 92 L.Ed. 436 (1948); *People v. Laverne, supra*, 251 N.Y.S.2d at 454, 200 N.E.2d 441.

Predicated on these findings, the State court went on to note that "entry into private premises by a public officer without a search warrant against the resistance of the occupant and in pursuance of the authority of law for the purpose of eliminating a hazard immediately dangerous to health and public safety is constitutionally valid if the purpose be summary or other administrative correction or as a foundation for civil judicial proceedings." *People v. Laverne, supra*, 251 N.Y.S.2d at 454, 200 N.E.2d at 442. In support of this proposition the court cited *Frank v. Maryland*, 359 U.S. 360, 79 S.Ct. 804, 3 L.Ed.2d 877 (1959), but went on to note that the case before it was distinguishable from *Frank, supra*, since the instant warrantless searches were conducted specifically to provide a basis for criminal prosecution, and not in order to lead to summary administrative action or civil proceedings for the purpose of protecting public health. *People v. Laverne, supra*, 251 N.Y.S.2d at 455, 200 N.E.2d 441.

The court, of course, reversed the convictions, holding that "searches by \* \* \* public officers of defendant's home without warrants for the purpose of criminal prosecutions \* \* \* [violated] his constitutional rights." *People v. Laverne, supra*, 251 N.Y.S.2d at 455, 200 N.E.2d at 443.

The following year the Appellate Division, relying on the above-quoted holding of the Court of Appeals

reversed the two contempt orders issued against the plaintiffs and held that just as the Village could not use the unlawfully obtained evidence as the basis for criminal prosecution, it could not make use of it in contempt proceedings, which were quasi-criminal in nature and could have resulted in imprisonment of the plaintiffs. Incorporated Village of Laurel Hollow v. Laverne, *supra*. The Appellate Division also noted that Frank v. Maryland, *supra*, was distinguishable and not controlling.

[4] In the face of the above-cited authority, defendants insist that they did not deprive plaintiffs of their constitutionally protected right to be free from unlawful searches and seizures. I find defendants' position untenable. Without considering whether the precise standards for either *res judicata*, *stare decisis* or collateral estoppel are applicable herein, I merely hold that as a matter of law, based upon the undisputed facts as I have found them to be, defendants' conduct was not constitutionally permitted at the time the entries were made. Frank v. Maryland, *supra*, and Ohio ex rel. Eaton v. Price, 364 U.S. 263, 80 S.Ct. 1463, 4 L.Ed.2d 1708 (1960), are not authority to the contrary for the reasons set forth by the Court of Appeals in People v. Laverne, *supra*. Defendants' conduct amounted to an unconstitutional search and seizure under the judicial authority then existing, and not because of a retroactive application by this Court of the standards set down by the Supreme Court in Camara v. Municipal Court, *supra*.

Defendants' suggestion that we are not bound by the New York Court's determination in People v. Laverne, *supra*, since a criminal acquittal is not *res judicata* in a related civil matter, misses the mark. Plaintiffs are not trying to introduce into evidence a trial court's acquittal which, of course, would be inadmissible since it could merely indicate, at best, that the Government had proven its case only by a preponderance of the evidence and not beyond a reasonable doubt. In fact, it is not the

plaintiffs' guilt or innocence which the Court deems relevant; rather, it is the sound legal conclusion reached by New York's highest tribunal in determining whether defendants' conduct was lawful and with which this Court agrees.

Having determined that defendants' unlawful conduct deprived plaintiffs of their right to be free from unconstitutional searches and seizures, and hence is redressable under the Civil Rights Act, it remains to be determined if any of the defenses posed by the defendants either prevent plaintiffs from recovering or raise genuine issues of fact which would require this Court to deny plaintiffs' motion for summary judgment. It also remains to be determined if any of the defenses raised on this motion are sufficient in law to grant defendants' motion for summary judgment.

Defendants urge that this action is essentially one in trespass and therefore is time-barred by Section 214(4) of the New York Civil Practice Laws and Rules (hereinafter referred to as "C.P.L.R.") which requires that "an action to recover damages for an injury to property" be commenced within three years from the time the alleged cause of action accrues.

Plaintiffs, on the other hand, contend that this action is one seeking "to recover upon a liability created by statute", as set forth in Section 214(2) of the C.P.L.R., and is thus governed by a six-year period of limitations because the predecessor to this subdivision of Section 214, Section 48(2) of the Civil Practice Act, provided for such a six-year period. It is argued that the Civil Practice Act's six-year period applies despite the C.P.L.R.'s corresponding three-year period for an action "to recover upon a liability created by statute" because the alleged cause of action accrued before the C.P.L.R. became effective and because C.P.L.R. § 218(b) specifically provides that:

"Where a cause of action accrued before, and is not barred when this article becomes effective, the time within which an action must be com-

menced shall be the time which would have been applicable apart from the provisions of this article, or the time which would have been applicable if the provisions of this article had been in effect when the cause of action accrued, whichever is longer."

Plaintiffs cite *Swan v. Board of Higher Education*, 319 F.2d 56, 60 (2d Cir. 1963), wherein Justice (then Judge) Marshall held the six-year period of limitations applicable in an action brought under the Federal Civil Rights Act because it was a suit "to recover upon a liability created by statute." Before reaching this conclusion, the court in *Swan* acknowledged that because the Civil Rights Act and the Federal Statutes contain no period of limitations for actions brought under the Act, the applicable period of limitations is the one the states would enforce had an action seeking similar relief been commenced in a court of that state. That is, "[s]ince the Civil Rights Act itself contains no limitation period, the court will look to the most analogous statute of limitations of the state where the cause of action arose." *Mulligan v. Schlachter*, 389 F.2d 231, 233 (6th Cir. 1968).

Admittedly, in *Mulligan, supra*, the court applied the period of limitations corresponding to that applicable to suits for false imprisonment and malicious prosecution brought within the state, and in *Henig v. Odorioso*, 385 F.2d 491 (3rd Cir. 1967), cert. denied, 390 U.S. 1016, 88 S.Ct. 1269, 20 L.Ed.2d 166 (1968), the state statutes of limitations applicable to suits for false imprisonment, false arrest and malicious prosecution were also applied. In both cases the courts deemed these periods of limitations most analogous to the ones the states would have applied had similar suits been commenced in their courts.

Similarly, Judge Cannella of this court, after approvingly citing *Swan, supra*, held that a four-month statute of limitations barred an action brought by a New York City policeman seeking re-

instatement on the police force and restitution of back pay and lost benefits. *Romer v. Leary*, 305 F.Supp. 366 (S.D. N.Y.1969). The Judge reasoned that since the patrolman's appropriate state remedy would have been an Article 78 Proceeding, his action was stale because it was not commenced "within four months after the determination to be reviewed [became] final and binding." *Romer v. Leary, supra* at 369.

While I do not fundamentally disagree with the conclusions reached in the above-cited cases, I am persuaded by and inclined to follow Judge Dooling's recent opinion in *Beyer v. Werner*, 299 F.Supp. 967, 969 (E.D.N.Y.1969), wherein he held that a civil rights claim brought under Section 1983 is governed by Section 214(2) of the C.P.L.R. (formerly Section 48(2) of the Civil Practice Act) since it is a claim brought under a federal statute. The Judge specifically rejected the County Attorney's suggestion therein that since the analogous claims were for either assault, battery or false imprisonment, the one-year period of limitations should be applied.

A California District Court reached a similar conclusion holding that the California limitation period most applicable to a claim under Section 1983 was the one with respect to actions to recover for "liability created by statute" and not the ones corresponding to California's civil actions for false arrest and malicious prosecution. *Beauregard v. Wingard*, 230 F.Supp. 167, 171 (S.D. Cal.1964).

Moreover, I think it obvious that plaintiffs herein seek to redress more than merely an "unlawful trespass" upon their property. The gravamen of the wrong alleged is defendants' deprivation of plaintiffs' constitutionally protected right to be free from unreasonable searches and seizures. This claim is supported by findings of both the New York Court of Appeals and the Appellate Division for the Second Department. *People v. Laverne, supra*; *Incorporated Village of Laurel Hollow v.*

Laverne, Inc., *supra*. To analogize the deprivation of such significant civil rights to a mere trespass unjustifiably enlarges the scope of a mere common law trespass and correspondingly diminishes the significance of protecting basic rights secured and protected by the Constitution of the United States. This Court will not lend its approval to such an inequitable equation. Just as murder necessarily involves an assault upon the victim, so also will an unlawful entry upon the premises of another in order to conduct an unconstitutional search and seizure consist of a trespass. In neither case, however, is the lesser wrong necessarily analogous to the greater.

[5] In view of the foregoing, I hold that since plaintiffs' cause of action is without a New York analogy this Court will apply the statute of limitations applicable to actions seeking recovery "upon a liability created by statute".

[6] Defendants further urge that since they were acting in "good faith" they have a good defense to the within action. Alternatively, they suggest that the issue of good faith presents genuine issues of fact which prevent this Court from granting plaintiffs' motion for summary judgment. The viability of their alternative position, of course, depends upon whether or not "good faith" is in law a valid defense to plaintiffs' action. For the following reasons, I find that good faith is not a valid defense to the instant action and, therefore, whether or not it presents issues of fact is irrelevant.

In *Monroe v. Pape*, 365 U.S. 167, 187, 41 S.Ct. 473, 5 L.Ed.2d 492 (1961), the Supreme Court held that there is no requirement that a defendant's action be lawful in order for him to be liable under Section 1983. Courts were admonished to read that Section with reference to general tort liability under which a man is held responsible for the legal consequences of his actions. *Monroe v. Pape*, *supra* at 187. Six years later, the Court (perhaps in order to prevent unduly harsh application of the *Monroe* decision) reversed a lower

court ruling that "policemen would be liable in a suit under § 1983 for an unconstitutional arrest even if they acted in good faith and with probable cause in making an arrest under a state statute not yet held invalid", *Pierson v. Ray*, 386 U.S. 547, 550, 87 S.Ct. 1213, 1216, 18 L.Ed.2d 288 (1967), and held that since "[p]art of the background of tort liability, in the case of police officers making an arrest, is the defense of good faith and probable cause. \* \* \* [this] defense \* \* \* is \* \* \* available to them in an action under § 1983." *Pierson v. Ray*, *supra*, at 556-57, 87 S.Ct. at 1219. Cases decided subsequent to *Pierson*, *supra*, have continued to apply this standard to police officers making an arrest as long as the common law of the state of the arrest recognized probable cause as a defense to an action for false arrest. *Whirl v. Kern*, 407 F.2d 781 (5th Cir.), cert. denied, 396 U.S. 901, 90 S.Ct. 210, 24 L.Ed.2d 177 (1969); *Joseph v. Rowlen*, 402 F.2d 367 (7th Cir. 1968); *Daniels v. Van De Venter*, 382 F.2d 29 (10th Cir. 1967).

In *Joseph v. Rowlen*, *supra*, 402 F.2d at 370, the Court specifically held that no "specific intent to deprive a person of a federal right" was required in order to be liable under Section 1983 and that even in the case of an arresting officer "good faith" is *not* a defense if the officer made the arrest without a warrant and without probable cause. The Court further went on to hold that where a police officer makes an unconstitutional arrest because made without a warrant and without probable cause, § 1983 imposes a liability on that officer which is recoverable in a federal court. "Additional circumstances coloring the officer's action as flagrant or malevolent are not required." *Joseph v. Rowlen*, *supra* at 370.

More recently, the Court of Appeals for the Fifth Circuit noted that it had persistently avoided attaching an improper motive requirement to a cause of action under Section 1983. *Whirl v. Kern*, *supra* 407 F.2d at 787. The Court

conceded that if an element of the wrong committed includes an improper motive, like malicious prosecution for example, then this may be part of the Section 1983 cause of action. But this is because it is required by the common law of torts, and not by the Civil Rights Act. It seems folly to state that a man is "responsible for the natural consequences of his actions", *Monroe v. Pape*, *supra* 365 U.S. at 187, 81 S.Ct. at 484, only if they are improperly motivated.

Again drawing from the learned opinion of Judge Goldberg in *Whirl v. Kern*, *supra* 407 F.2d at 788:

"[T]he unmistakable trend of judicial decisions has been away from the encrustation of the Civil Rights Act with judicially created limitations. Whereas the Act was once rigidly limited to instances of systematic discrimination or physical brutality, in recent years courts have shown themselves increasingly willing to entertain suits under § 1983 where even improper motive is hard to find. \* \* \* [W]e are, like the Seventh Circuit, impressed with the lack of justification for the improper motive requirement. We find no \* \* \* basis for it in the language of the Act or in the Supreme Court decisions. \* \* \*" (Citations and footnotes omitted.)

We turn now to consideration of whether "good faith" is a possible common law defense to the instant action. Assuming (but by no means conceding for the reasons previously indicated) that the closest analogy to the defendants' conduct is a trespass, it is clear that "good faith" would not be an available defense under the common law of this State. *O'Horo v. Kelsey*, 60 App. Div. 604, 70 N.Y.S. 14, 18 (1901). Admittedly, the actor must intend to commit the act which amounts to the trespass, or results in the damage, but it is no defense that he did not intend to commit a trespass, or that he didn't know that his act constituted a trespass. In fact, he may be completely free of

moral fault—he need only intend to perform that act which results in the damages sustained. *Socony-Vacuum Oil Co. v. Bailey*, 202 Misc. 364, 199 N.Y.S.2d 799, 801-802 (Sup.Ct.1952).

As another affirmative defense, it is urged that Section 341(1) of the Village Law, Consol.Laws, c. 64, and Section 50-e of the General Municipal Law, Consol.Laws, c. 24, require that a notice of claim be served upon the defendants herein and the Village within 90 days after the alleged claim arose.

It is well settled that Section 50-e of the General Municipal Law creates no obligation to serve notice but merely prescribes the manner in which notice, if required, shall be given. *Harrigan v. Town of Smithtown*, 54 Misc.2d 793, 283 N.Y.S.2d 424 (Sup.Ct.1967). This is also clear from the plain language of subdivision 1 of section 50-e which, in pertinent part provides that "where a notice of claim is required by law as a condition precedent to the commencement of an action \* \* \* the notice shall comply with the provisions of this section and it shall be given within ninety days after the claim arises."

Section 341(1) of the Village Law, in pertinent part, provides that "No action shall be maintained against the village for a personal injury or an injury to property alleged to have been sustained by reason of the negligence or wrongful act of the village or of any officer, agent or employee thereof, unless a notice of claim shall have been made and served in compliance with section fifty-e of the general municipal law."

Plaintiffs admit that no notice was served, but contend that none was required because: 1) the within action is not against the Village; and 2) to require such notice would result in an unlawful limitation by the state upon the federal court's jurisdiction to hear and determine a federal claim.

[7] Appellate authority in this State has unequivocally held that when there exists no statutory duty requiring a municipality to indemnify an officer

for his allegedly wrongful conduct there is no necessity for service of a notice of claim upon that municipality as long as it is not made a party to the action. *O'Hara v. Sears Roebuck & Co.*, 286 App.Div. 104, 142 N.Y.S.2d 465, 467 (1955). In a more recent case, a similar conclusion was reached by the Appellate Division. *Widger v. Central School Dist. No. 1*, 20 App.Div.2d 296, 247 N.Y.S.2d 364 (1964).

No basis for indemnity has been pleaded and the Court has found none. Defendants' contention that the doctrine of *respondent superior* provides a basis for indemnity is without merit. *Respondent superior* would only be applicable in the instant suit if the Village were already a party defendant. That is predicated on the above-cited theory, the Village, as employer of the defendants, could no doubt have been sued and made to respond in damages, had it been served with a timely notice of claim. *Respondent superior* therefore involves the employer's or master's liability to third persons for damages caused by the wrongful acts of its employees, and not the wrongdoing employee's possible right of indemnity from the employer.

Plaintiffs, as a further basis to extricate themselves from the notice requirement of Section 50-e, urge that application of this provision would unlawfully limit this Court's jurisdiction over a well pleaded federal claim.

[8] I find plaintiffs' position well taken, especially since this Court is required to abide by the "familiar doctrine that the prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common law rules." *Sola Elec. Co. v. Jefferson Elec. Co.*, 317 U.S. 173, 176, 8 S.Ct. 172, 173, 87 L.Ed. 165 (1942); *Wingard v. Wingard*, *supra* 230 F.2d at 173.

Well pleaded claims under the Civil Rights Act are typical examples of situations wherein "the policy of the Act is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed

governed by the federal law \* \* \* rather than by local law." *Sola Elec. Co. v. Jefferson Elec. Co.*, *supra*, 317 U.S. at 176, 63 S.Ct. at 174.

Five years after the Court's decision in *Sola*, *supra*, Mr. Justice Frankfurter noted that "where resort is had to a federal court not on grounds of diversity of citizenship but because a federal right is claimed, the limitations upon the courts of a State do not control a federal court sitting in the State." *Angel v. Bullington*, 330 U.S. 183, 192, 67 S.Ct. 657, 662, 91 L.Ed. 832 (1947); accord, *Holmberg v. Armbrrecht*, 327 U.S. 392, 395, 66 S.Ct. 582, 90 L.Ed.2d 743 (1946).

Supreme Court rulings in a fairly recent admiralty action also lend support to plaintiffs' position. In *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 409, 74 S.Ct. 202, 98 L.Ed. 143 (1953), the Court refused to apply state law which would completely deny recovery to a seaman guilty of contributory negligence, solely because the respondent's right of recovery was bottomed on federal and not state law. The Court noted that "[w]hile states may sometimes supplement federal maritime policies, a state may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress. \* \* \*" *Pope & Talbot, Inc. v. Hawn*, *supra* at 409-410, 74 S.Ct. at 205. A recent decision of the New York Supreme Court supports a similar conclusion. *Rogers v. City of New York*, 46 Misc.2d 373, 259 N.Y.S.2d 604, 608 (1965).

[9] Since the plaintiffs herein likewise seek redress for the deprivation of a federally created right, this Court is constrained to hold the New York notice of claim requirement inapplicable insofar as it serves to deprive the plaintiffs of a substantial right defined and created by Congress, embodied in the Federal Civil Rights Act, and protected by the Constitution of the United States.

The final issue for consideration is defendants' unbriefed contention that

plaintiffs' action should be dismissed because it is *res judicata*. Although defendants have not pursued this issue, the Court will not deem it abandoned since if this theory were correct it could defeat the entire action herein.

The prior action ostensibly relied upon by defendants is *Laverne v. Corning*, commenced in the Nassau County Supreme Court (Index No. 8732/1964) against two of the defendants herein and another defendant not a party to the instant action.

Careful reading of the complaint and the decision rendered in that action reveals that: 1) only one of the present plaintiffs was a party to the prior action; 2) only two of the instant defendants were party defendants to the prior action; and, most important, 3) the prior complaint essentially charged the defendants with conspiring to willfully and maliciously injure the plaintiff by subjecting him to unwarranted prosecution, and forcing him to leave the Village. (The decision and complaint in the prior action are attached as Exhibits C and D to plaintiffs' notice of motion, dated January 16, 1970.)

Without passing on whether the Court's decision in the prior action would have any bearing on plaintiffs' conspiracy claim under the Civil Rights Act, it seems clear that that part of plaintiffs' suit which seeks to redress injuries sustained as a result of being deprived of their right to be free from unconstitutional searches and seizures, presents a separate and distinct cause of action wholly unrelated to anything that was before the Nassau County Supreme Court.

Although defendants' unconstitutional acts may have been alleged in the prior complaint in order to substantiate the conspiracy charge, these acts are central to, and in fact the basis of, the present action. The complaint in the state action alleges that the defendants therein "conspired \* \* \* to cause plaintiff to be arraigned on informations and tried in criminal proceedings \* \* \* for allegedly violating the

Building Zone Ordinance of that Village." (Complaint ¶ 8.) Paragraph 9 of the same complaint alleges that in furtherance of the conspiracy the illegal search was conducted in order to procure evidence of the alleged violations.

The decision in that action also supports the conclusion that the prior action was essentially one seeking recovery for an alleged conspiracy to prosecute plaintiff, and force him to leave the Village. The second sentence of the opinion, in pertinent part, reads: "The complaint alleges that the defendants \* \* \* conspired to cause the plaintiff to be arraigned tried and convicted in a criminal proceeding. \* \* \* The next to last sentence of the opinion concludes that: "A reading of the entire complaint in its most favorable light fails to reveal sufficient facts upon which plaintiff can predicate his action for conspiracy."

[10] Based upon the foregoing, I think it obvious that since both actions are governed by different legal theories, the state court judgment is not *res judicata* as to the instant action. The Nassau County Supreme Court was never presented with, and certainly did not decide *sua sponte*, the issue of defendants' liability for compensatory damages under the Federal Civil Rights Act for violating plaintiffs' constitutional rights.

Accordingly, and for the foregoing reasons, plaintiffs' motion for summary judgment is granted and defendants' motion is in all respects denied.

Submit order on notice in accordance herewith.

#### SUPPLEMENTAL MEMORANDUM

On July 8, 1970, this Court handed down an opinion granting plaintiffs summary judgment, interlocutory in character, on the issue of defendants' liability for compensatory damages. Liability was predicated upon this Court's finding that the defendants while acting in their official capacities as officers of the Incorporated Village of Laurel Hollow, unlawfully entered

upon plaintiffs' premises and conducted searches and seizures thereon in violation of plaintiffs' constitutional rights protected under the Fourth and Fourteenth Amendments to the Constitution.

Pursuant to the Court's instruction, on July 17, 1970 plaintiffs submitted an order in accordance with the opinion. Ten days later, defendants submitted a counter-order, in all respects identical to plaintiffs' order except that it included a provision pursuant to 28 U.S.C. § 1292(b) requesting the right to petition the Court of Appeals for permission to appeal this Court's interlocutory decision. Defendants' counter-order further included a stay of the instant proceedings until the Court of Appeals determined defendants' application.

Section 1292(b) of Title 28 of the United States Code, in pertinent part, provides:

"When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order."

By the terms of said statute, permission to seek an interlocutory appeal should be withheld if the district court's opinion does not depend upon "a controlling question of law as to which there is substantial ground for difference of opinion" and unless an immediate appeal would materially advance termination of the litigation. While the issues and defenses raised in the instant action presented some unique issues relative to liability under the Federal Civil Rights Act, 42 U.S.C. § 1981 et seq., the controlling questions of law seemed compelled by the underlying facts as this Court found them to be. Thus,

after reconsidering the numerous legal issues involved, I am not persuaded that a *substantial ground* for a difference of opinion exists.

Further, since the only issue remaining is the determination of the quantum of damages to be awarded plaintiffs,<sup>1</sup> which apparently will not involve expensive and protracted litigation, there is little reason to believe that permitting an appeal from this Court's decision will "materially advance the ultimate termination of the litigation".

[11] Accordingly, and for the foregoing reasons, the Court will sign the order submitted by plaintiffs on July 17, 1970, and defendants' request for permission to seek leave of the Court of Appeals to appeal said order is denied.

It is so ordered.



TECHNITROL, INC., Plaintiff,

v.

ALADDIN INDUSTRIES, INC.,

Defendant.

No. 67 C 2067.

United States District Court,  
N. D. Illinois, E. D.

April 27, 1970.

Patent infringement action, wherein defendant counterclaimed alleging invalidity. The District Court, Robson, Chief Judge, held that claims 1-4 and 6, 7 of patent No. 3,155,766, relating to electrical component assemblage were invalid for obviousness, and claims 8, 9 of same patent were invalid for claiming unpatentable aggregation.

Judgment accordingly.

#### 1. Patents C-80

Device used in restricted project and sold under single restricted contract

<sup>1</sup> This is the only issue remaining with respect to the first two counts of plaintiffs' complaint.

ORDER OF JUDGE TENNEY  
GRANTING APPELLANTS PARTIAL  
SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ERWINE LAVERNE and ESTELLE  
LAVERNE,

Plaintiffs,

67 Civ. 2830

-against-

HOWARD J. COLLING, JR., Mayor;  
HUTCHINSON, Deputy Mayor,  
Police Commissioner and a Trustee;  
ORR, LUCI, JOHN MACKAY and DOUGLAS  
BENTON, Trustees; MARTIN MEYER,  
Chairman of the Planning Board;  
HUMI J. BEN, Building Inspector;  
and EDWARD J. MELMAN, Police Sergeant;  
jointly, and severally and indi-  
vidually and as respective officers  
as stated of the Incorporated Village  
of Laurel Hollow,

ORDER

Defendants.

-----X  
THIS CAUSE having come on to be heard on motion  
of plaintiffs for an order pursuant to Rule 56, F.R.Civ.P.  
directing entry of summary judgment, interlocutory in  
character, on the issue of liability for compensatory  
damages alone, or, in the alternative, ascertaining what  
material facts exist without substantial controversy and  
directing such further proceedings in the action as are  
just, and the Court having considered plaintiffs' Notice of  
Motion dated January , 1970 with the Statement Under  
General Rule 9(g), the affidavit of Jonathan W. Lubell  
sworn to the 15th day of January, 1970, the affidavit of  
plaintiff Erwine Laverne, sworn to the 15th day of January,  
1970, the Summons herein, dated July 21, 1967, the Complaint

herein, the Answer herein, the Complaint in the matter of Erwine Laverne against Howard Corning, Jr., et al in the Supreme Court of the State of New York, County of Nassau, the Order of Hon. Edward Robinson, Jr. of the Supreme Court of the State of New York, County of Nassau, dated October 23, 1964, granting a motion for judgment dismissing the complaint in the said matter of Erwine Laverne against Howard Corning, Jr., in said court, index number 8732/1964, the opinion of Hon. Edward Robinson, Jr. in the Supreme Court of the State of New York, County of Nassau, dated October , 1964, granting motion to dismiss the complaint, in the said matter of Erwine Laverne against Howard Corning, Jr., all annexed to plaintiffs' said Notice of Motion, and all read in support of plaintiffs' motion; and defendants' Cross-Notice of Motion dated April 8, 1970, for an order granting summary judgment in favor of the defendants and against the plaintiffs, with the affidavit of Howard J. Corning, Jr., sworn to the 7th day of April, 1970, the affidavit of Hugh Johnson, sworn to the 3rd day of April, 1970, the affidavit of Hutchinson Dubosque, sworn to the 7th day of April, 1970, the affidavit of Thomas C. Platt, sworn to the 8th day of April, 1970 (with the opinion of Mr. Justice Suzzo of the Nassau County Supreme Court, in the matter of Incorporated Village of Laurel Hollow v. Laverne Originals, Inc., appearing in the New York Law Journal, December 18, 1962 annexed thereto), the affirmation of Jerrold N. Cohen, affirmed the 8th day of April, 1970 (with four photographs annexed thereto), all annexed to defendants' said Cross-Notice of Motion and all read in

opposition to plaintiffs' motion and in support of defendants' cross-motion; the reply affidavit of Jonathan W. Lubell, sworn to the 28th day of April, 1970, with the Opinion of Pittoni, Jr. of the Supreme Court of the State of New York, County of Nassau, in the matter of Laverne v. Inc. Vill. of Laurel Hollow, index number 13178/1964, dated November 18, 1964, annexed thereto in support of plaintiffs' motion and in opposition to defendants' cross-motion; the defendants' 9G Statement Pursuant to Court Rules of U.S. District Court (S.D.N.Y.) in opposition to plaintiffs' motion and in support of defendants' cross-motion;

AND HAVING heard Jonathan W. Lubell, Esq. in support of plaintiffs' motion and in opposition to defendants' cross-motion and having heard Jerrold N. Cohen, Esq., in opposition to plaintiffs' motion and in support of defendants' cross-motion;

AND HAVING found that there exist no genuine issues of fact to be submitted to the trial court;

AND HAVING concluded, as set forth in this Court's opinion of July 6, 1970 that plaintiffs are entitled to judgment as a matter of law on the first two counts of the complaint herein for such amount as shall be found to be due them as damages;

AND HAVING concluded that there is no just reason for delay in the entry of summary judgment herein; it is hereby

ORDERED, that plaintiffs' motion herein be, and hereby is, in all respects, granted; and it is further

ORDERED, that defendants' cross-motion herein be, and hereby is, in all respects, denied; and it is further

ORDERED, that summary judgment be entered herein in favor of plaintiffs and against defendants, on the first two counts of the complaint, for such amount as shall be found to be due them as damages; and it is further

ORDERED, that this cause be placed upon the jury calendar for trial upon the sole issue of damages on the first two counts of the complaint.

Dated at New York, New York, this      day of July, 1970.

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U.S.D.J.

OPINION OF JUDGE TENNEY  
DENYING APPELLEES' MOTION  
TO VACATE SUMMARY JUDGMENT

States Steel Corp. et al., *supra*. Also, Section 15 of an agreement between the Corporation and Local 4889 which was in effect in 1966 stated that the Corporation was to accord to each employee who applied for re-employment after conclusion of his Military Service with the United States, such re-employment rights as he shall be entitled to under then existing statutes. Thus the Corporation not only violated the statute by failing to grant Plaintiff retroactive seniority status, but it violated its agreement with the Union by mis-stating to Plaintiff that he had no right to move ahead in seniority. The requirement that the parties have "clean hands" in order that the Court may do equity is not as strictly applied as it once was, but the doctrine is still valid as a measure of the reasonableness of a party's actions in considering the overall equities in a given case. Here the Court is of the opinion that the Corporation and to some extent the Union, do not have "clean hands" because they contributed to the time delay asserted as a defense herein. The Court feels that Plaintiff acted in a way in which a reasonable man in his position would have acted and is not guilty of laches.

[13, 14] Defendant makes the further argument that those employees with job seniority dates senior to Plaintiff who were junior to him prior to his induction will now be "bumped" down because Plaintiff has a new job seniority date. First, the Corporation cannot assert the possible prejudice of a third party to sustain its laches defense, see, *Bostick v. General Motors Corp.*, 161 F. Supp. 212 (E.D.Mich.1958) but even if it could, these employees have no vested right to a senior position which violates Plaintiff's rights under Section 9 of the Selective Service Act of 1967. See, *Whitmore v. Norfolk & Western R. R. Co.*, 73 LRRM 2001 (N.D.Ohio, 1969). Employees generally must expect to be bumped in future cases of seniority adjustment if we are to enforce the law as written.

The nature of the equitable relief sought here does require the trial Court to exercise its sound discretion in reaching its decision. The Court is convinced that Plaintiff made a diligent attempt to assert his right to re-employment and that he should not be precluded from asserting his claim. Any other result would be unfair to Plaintiff.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction of the action and the parties.
2. Plaintiff is not guilty of laches.
3. Plaintiff is entitled to have his job service date changed to April 6, 1965, as per the stipulation agreed to by the parties.
4. Plaintiff is entitled to compensation for loss of wages from March 14, 1966, to be computed in accordance with the stipulation of the parties.



Erwine LAVERNE et ux., Plaintiffs,

v.

Howard J. CORNING et al., Defendants.

No. 67 Civ. 2830 (CMM).

United States District Court,  
S. D. New York.

Nov. 15, 1972.

Owners of art studio brought action under Civil Rights Act against village officers to recover compensatory and punitive damages for alleged deprivation of their right to be free from unreasonable searches and seizures and filed motion for summary judgment on issue of officers' liability for compensatory damages. The District Court, 316 F.Supp. 629, granted the plaintiffs' motion and the defendants subsequently filed motion

to vacate the order. The District Court, Tenney, J., held that alleged "good faith" of defendants was no defense to plaintiffs' action.

Motion to vacate denied without prejudice to its renewal before judge to whom case was assigned for trial.

Jonathan W. Lubell, New York City, of counsel.

Mudge, Rose, Guthrie & Alexander, New York City, for defendants; Henry Root Stern, Jr., Thomas R. Esposito, New York City, of counsel.

#### MEMORANDUM

TENNEY, District Judge.

This is a motion to vacate an order of this Court, entered on August 21, 1970, granting plaintiffs summary judgment on the first two causes of action solely on the issue of liability and on the basis of a memorandum opinion filed by me on July 6, 1970. *Laverne v. Corning*, 316 F.Supp. 629 (S.D.N.Y.1970). Defendants' motion is prompted by *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 456 F.2d 1339 (2d Cir. 1972).

Plaintiffs brought this action under the Federal Civil Rights Act, 42 U.S.C. § 1983 (1970), to recover compensatory and punitive damages for an unconstitutional search and seizure participated in by the defendants, all of whom were at the time officials of the Incorporated Village of Laurel Hollow, Nassau County, New York. In the decision of July 6, 1970, this Court held, among other things, that as a matter of law the pleaded defense of "good faith" of the defendants was no defense to an action under § 1983. Concededly, if the Court was in error, summary judgment should not have been granted.

Assuming, however, the power of this Court in the interest of justice to vacate an order which is shown by subsequent decision in another case to have been incorrect—*cf. Dictograph Products Co. v. Sonotone Corp.*, 230 F.2d 131 (2d Cir.), appeal dismissed, 352 U.S. 883, 77 S.Ct. 104, 1 L.Ed.2d 82 (1956)—the present case does not warrant the invocation of that power, since the holding that good faith is not a valid defense to the causes of action referred to has not necessarily been impaired by *Bivens*.

[1, 2] Following the decisions in *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct.

#### 1. Civil Rights § 13.10

In actions commenced under Civil Rights Act, availability of a particular defense will depend upon whether the defense could be similarly used as a defense to tort liability in a parallel common-law cause of action. 42 U.S.C.A. § 1983.

#### 2. Civil Rights § 13.10

"Good faith" of defendants was no defense to action under Civil Rights Act for deprivation of constitutionally protected right to be free from unreasonable searches and seizures. 42 U.S.C.A. § 1983.

#### 3. Federal Civil Procedure § 2559

Where action commenced under Civil Rights Act for deprivation of plaintiffs' right to be free from unreasonable searches and seizures had been assigned to another judge for all purposes after entry of order granting plaintiffs' motion for summary judgment on issue of defendants' liability for compensatory damages and case was moving toward trial, defendants were not entitled to have order granting summary judgment vacated on theory that subsequent decision of Court of Appeals in another case showed that grant of summary judgment on ground that "good faith" of defendants was no defense was incorrect. 42 U.S.C.A. § 1983; Fed.Rules Civ.Proc. rule 49, 28 U.S.C.A.

#### 4. Federal Civil Procedure § 2559

Defendants were not entitled to have order granting partial summary judgment vacated absent any newly discovered facts or changes in law.

Cohn, Glickstein, Lurie, Ostrin & Lubell, New York City, for plaintiffs;

473, 5 L.Ed.2d 492 (1961) and *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), holding that § 1983 should be read against the background of tort liability, the courts have recognized the principle that in § 1983 cases the availability of a particular defense will depend upon whether it could be similarly used as a defense to tort liability in the parallel common law cause of action. *Jenkins v. Averett*, 424 F.2d 1228, 1233 (4th Cir. 1970); *Whirl v. Kern*, 407 F.2d 781, 787-788 (5th Cir. 1968), cert. denied, 396 U.S. 901, 90 S.Ct. 210, 24 L.Ed.2d 177 (1969); *Joseph v. Rowlen*, 402 F.2d 367, 369-370 (7th Cir. 1968); *Jenkins v. Meyers*, 338 F.Supp. 383, 390 (N.D.Ill.1972). I do not read *Bivens* as disagreeing with the principle enunciated by both *Monroe* and *Pierson* and the subsequent decisions of other courts that a good faith defense to § 1983 is available only where such a defense would be available to tort liability in the parallel common law cause of action. In the first place *Bivens* did not involve liability under § 1983, but was involved with "formulating a federal rule that applies on the same terms to both state and federal police officers" in a suit based on "the federal common law right of an aggrieved person to sue for damages caused by a violation of the Fourth Amendment guarantee against unreasonable searches and seizures." *Bivens, supra*, 456 F.2d at 1341. When the court stated that it believed the defense of good faith "to be the same defense held applicable to cases arising under Section 1983" (*Id.* at 1347) and cited *Pierson v. Ray, supra*, 386 U.S. 547, 87 S.Ct. 1213, as authority, it obviously was referring to the defense of good faith in unconstitutional arrest cases where the parallel common law action for false arrest allows such a defense (in *Pierson* under the common law of Mississippi). It also is obvious that in *Bivens* the court was concerned with the

availability or non-availability of defenses as between state and federal law enforcement agents, *e. g.*, the grant of immunity. *Bivens, supra*, 456 F.2d at 1346-1347. Having refused to grant an immunity to federal agents not enjoyed by state agents similarly situated, it was only logical and just to give them the same defense enjoyed by their state brethren under common law. The observation that state law enforcement agents had the same defense in cases arising under § 1983 was purely gratuitous and in no way conflicts with the authorities hereinbefore cited.

[3] Furthermore, little would be accomplished by my vacating the prior order herein. Subsequent to the date of that order the case was assigned to another judge for all purposes and presently is moving toward trial. If the assigned Judge so desires he can, in the exercise of his discretion, "go into the merits of a question previously decided in a case prior to final judgment"—*Woods Exploration & Producing Co. v. Aluminum Co. of America*, 284 F.Supp. 582, 585 (S.D.Tex.1968), rev'd on other grounds, 438 F.2d 1286 (5th Cir. 1971), cert. denied, 404 U.S. 1047, 92 S.Ct. 791, 30 L.Ed.2d 736 (1972)—or he can, at trial, permit the defense of good faith to be tried and have a special verdict or general verdict with interrogatories returned under Fed.R.Civ.P. 49.

[4] Finally, the motion of certain defendants to have the order granting partial summary judgment vacated as to them on grounds other than those already discussed herein is not supported by any newly discovered facts or changes in the law and is denied.

Accordingly, defendants' motion to vacate is denied without prejudice to its renewal before the judge to whom this case is now assigned.

So ordered.

CHARGE OF THE COURT

(In open court, jury present.)

THE CLERK: The Court is about to charge the jury. Any spectator wishing to leave the courtroom shall do so now or remain seated until the completion of the Court's charge.

# CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, as a preliminary matter, just let me tell you what will happen.

First, I will charge you what I believe to be the applicable law. And then I will excuse you while counsel for either side will have an opportunity to object to what I have said, suggest I have left something out, say I should have said something different, all that kind of thing. And then after hearing that and deciding what if anything I should do, I will bring you back and make any corrections I deem necessary.

The reason for that is obvious, no lawyer wants to get up and say Judge, that was a terrible thing you said, and I say no, it was a hundred percent right, let me repeat it -- obviously lawyers should have freedom to criticize the Judge and not be worried about what the jury thinks about it.

When I send you out for that interim, it will be the last time I will tell you not to form or express opinions, because -- and it may be the most important, because I have

2 demonstrated a number of time that I am not infallible and I  
3 might have left out, I hope not, but I might have left out  
4 something significant that would have an impact on your  
5 thinking. And after the final charge is given I will submit  
6 the case to you. But at that point I will excuse the  
7 alternates and I will submit the case to you with the  
8 injunction that you shouldn't start discussing it until  
9 you have come back from lunch.

10 As I told you earlier, and this is important here,  
11 because when you are looking at notes and you are preoccupied  
12 with what you are doing, you tend to forget, I may drop my  
13 voice. If I do, I will take it as a favor if both you or  
14 counsel call it to my attention.

15 Finally, you have seen -- if you see Miss Pessin,  
16 my law clerk, get up and whisper something to me, it's  
17 because I have missed a name. I am terrible on names, and  
18 it's quite confusing.

19 Just a technical detail. On this first page, it  
20 says Howard J. Corning, mayor; of course he is also a  
21 trustee. The deputy mayor is listed as also a trustee, and  
22 I don't want you to get any misimpression. Howard J. Corning  
23 is a trustee also.

24 We now come to the case at hand. In the first  
25 place, everybody has mentioned your supremacy in the facts,

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2 and I am certainly not going to go over it again, but I am  
3 going to say something, tell you something about that which  
4 may come as a surprise to you.

5 I have if I want to in this Court -- across the  
6 street they don't have that right, across the street being  
7 the State Supreme Court, I have in this Court the perfect  
8 right if I want to to go down the list of each witness and  
9 tell you I think this one is telling the truth for this and  
10 this reason, that one is lying for this and that reason, I  
11 believe this testimony, I don't believe this testimony, for  
12 that and that, provided I tell you you are the final  
13 arbiters.

14 Why do I tell you that? I want you to understand  
15 the reason I charge you on this question, as I have before,  
16 and I agree with counsel, and I will come to this again  
17 later in my charge, the reason I charge you as I do is  
18 because I have a profound conviction that that is the way  
19 to run a jury trial; that the best result is achieved if the  
20 Judge keeps his views of the evidence out of it, because as  
21 I told you earlier, he listens to the evidence, to the  
22 testimony, from an entirely different point of view from the  
23 jury, and he should keep out of it, keep his views out of it  
24 in order to achieve a proper result.

25 I tell you this so you will realize I believe it,

2 not because some rule makes me say it before I get on to  
3 something else. That is why I tell you I could do it  
4 differently if I wanted to. Of course, you being the supreme  
5 judges of the facts makes you obviously the final arbiters as  
6 to the credibility of the witnesses.

7 There is nothing mysterious about how we appraise  
8 the credibility of witnesses. Every day in your lives people  
9 are telling us something which they want us to believe for  
10 one reason or another. Our children talk to us, our parents  
11 talk to us, our other members of our family talk to us, our  
12 employees talk to us, employers talk to us, people we  
13 want to buy from, people who want to sell us, politicians --  
14 every day in our lives we are being talked to by someone who  
15 for one reason or another wants us to believe what he is  
16 saying.

17 And we just develop antennae. I don't suppose we  
18 could sit down and explain what those antennae are, but  
19 developed to sift out what a person is saying, sift out what  
20 a person believes to be the fact but isn't -- all those  
21 things we develop antennae for.

22 If I had to decide the credibility of witnesses,  
23 I have only one set of life experiences to bear on that  
24 question. One set of antennae. You have six such sets.

25 And the theory of the law is, and I believe it's

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right, that it's more likely for a proper result to be achieved in any given case if six persons, or in a criminal case twelve, if six persons bring to bear on the problem their individual life history and antennae, and kind of pool them and talk to each other about them and come up with a composite result.

But of course that only works if you do what the law contemplates, namely, discuss the matter with each other with an open mind and give each of the others the benefit of his and her antennae, for want of a better word. And it also only works if you use your own judgment and don't try to figure out what I may think.

There are certain guidelines. One of them deals with interested witnesses. The law says that you are entitled to, and this is just common sense, to appraise the interest of a witness in the outcome, in appraising his testimony. Here most of the witnesses were parties and obviously all the parties are interested.

The plaintiffs want money, I will come to the question of money later, and the defendants don't want to pay money. It's as simple as that.

That doesn't necessarily mean that either one or the other isn't necessarily telling the truth, but it means that you are entitled to and should weigh this fact in

deciding the credibility.

Credibility doesn't necessarily mean lying or not lying. In fact, 90 percent of the time conflicts of evidence haven't anything to do with lying or not lying. They are different people looking at different situations through different memory and different warping of memory over a period of time, telling different stories of what happened. Sometimes it is pure lying. Sometimes somebody gets on the stand and just says John Jones was there, when he knows perfectly well that John Jones wasn't there.

I'm not suggesting it happened in this case or it didn't happen. But 90 percent of the time the conflict of interest has nothing to do with it. 90 percent of the time, A sees an event, B sees an event, each has a different interest in seeing the event, maybe after -- not this long, but sometimes afterward they have to testify and they each with perfect honesty get up and tell an entirely different story. And the jury, with its antennae, figures out what the truth is.

As I said, all the parties are interested, by hypothesis, and it's up to you to figure out whether the expert witness and Rudy have an interest in the testimony.

The next thing I will talk about is expert witness. It's obvious but just briefly. Usually you can only testify

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to facts that you know about one way or another. Either you know them officially or you know them because you saw them. An expert by hypothesis doesn't know anything about the facts. But he is asked to assume certain facts or examine a factual situation and on the basis of his expertise give the Court or jury a conclusion as to what those facts mean in any given situation.

The most obvious one is a medical expert. If anybody served on juries for any length of time, he is going to meet up with a medical expert. Here we have a legal expert. The law says that you are entitled to give expert testimony such credence as you think it deserves. You are entitled to consider whether the man is qualified. I guess there is no question in this case about that. You are entitled to consider whether the man is qualified, whether he understands the facts correctly.

For example, if an expert gives testimony on a set of facts A, and you believe the facts to be B, why, then, of course the testimony is useless. Does he understand the facts correctly, and in your judgment is he giving some valuable advice.

It's presumptuous you might think to try to apply to an expert your judgment, but you have to do that every day in your life. If somebody in your family gets sick and it's

2 a serious sickness and you get a consultation and two doctors  
3 come in, both eminent, and they come up with a different  
4 result, different recommendation, you have to decide. No  
5 way of getting around it. You have got to decide which  
6 recommendation to follow. And the fact that you are not a  
7 doctor doesn't relieve you of the obligation of deciding, if  
8 it's your child. And you have to decide. And you size up  
9 the expert and use your antennae to come to a conclusion.

10 It's the same thing here.

11 Now, burden of proof. The burden of proof in a  
12 civil case is simply this: It means that the party having  
13 that burden, and I will tell you who that party is with  
14 respect to the several issues, the party having that burden  
15 has the obligation of persuading you that his version, I am  
16 using the singular for simplicity -- that his version of the  
17 facts or of the issue to be presented to you is more probably  
18 correct than not.

19 That's all there is to it. If the party having the  
20 burden persuades you that his version, his contentions with  
21 respect to the issue are more probably correct than not, he  
22 has borne that burden. If, on the other hand, he leaves you  
23 in a frame of mind that his version is less probably correct  
24 than not, obviously he hasn't. Or if, on the other hand,  
25 your mind is in equipoise, then you can't make up your mind,

your not supposed to flip a coin, he hasn't satisfied his burden and it goes to the other side on that issue.

In this case the burden is different on each set of questions put to you. Question Number 1 is one set and question Number 2 and 3 I call a second set. You must first decide with respect to the first question as to whether the defendants individually, you have to decide this question different with respect to each defendant, acted in good faith. As to that, each of them has the burden as above described. Of course, as to any defendant who bears his burden of satisfying you that he acted in good faith, so you answer question Number 1, yes, that ends your deliberations with respect to that defendant.

As both counsel -- one or both, I think they both said it, malice and good faith are just mutually inconsistent theories or facts and if any defendant satisfies you his burden as to the first question, you put answer yes opposite his name in the case, your problem is over so far as he is concerned.

If, however, you answer no as to any defendant in the answer to the first question, then you must go on to consider whether he or any of them acted with malice towards these plaintiffs or either of them, as if so, that damages should be awarded as to matters -- no, what damage should be

2 awarded.

3 As to those matters, malice and damages, it is the  
4 plaintiffs who have the burden of proof, and everything I  
5 have said about burden of proof applies to them.

6 So much for general rules. Let's get down to the  
7 particular issues in this case.

8 As I told you at the outset, there is no question  
9 but that these defendants were illegally on the premises.  
10 That is those who were on the premises and the others  
11 illegally sent them. The New York Court of Appeals estab-  
12 lished that fact. To be sure, the New York Court did not  
13 do so until two years after the event, and even then three  
14 out of the seven Judges thought the defendants' actions had  
15 been proper.

16 But that's all beside the point. As far as we are  
17 concerned, the Court of Appeals, which is the highest court  
18 in the State of New York, has spoken and its ruling as to  
19 that fact has to be accepted by us.

20 The only questions we are now to decide, and by we,  
21 I mean you acting under the rules as I shall lay them down to  
22 you, is the question of the defendants' good faith or lack of  
23 it, and possibly malice, or lack of it.

24 Preliminarily let me tell you that you should not  
25 concern yourselves with the consequences of the finding of

1 good faith or lack of it. That will not end the case. That  
2 just throws the ball back at me. And it is then for me to  
3 decide, with the information provided by you of whether they  
4 acted in good faith or not, whether and to what extent they  
5 are responsible for damages to the plaintiffs for their  
6 concededly illegal act.  
7

8 Of course, if you come to malice, then you must  
9 consider the consequences, because as the question put before  
10 you indicated, you must fix any damages to be assessed  
11 because of malice. I have nothing to do with that.

12 Getting down to good faith, and the same applies  
13 to malice, I want to emphasize that we are trying an  
14 exceedingly narrow issue here, namely, what was the state of  
15 mind of each of these defendants from July to December 1962.  
16 Let me repeat: What was the state of mind of each of these  
17 defendants from July to December of 1962.

18 It may seem to you that most of the evidence in  
19 this trial has related to other and different periods of  
20 time. That evidence was admitted and may be considered by  
21 you only as bearing on the state of mind or the reasonableness  
22 of such state of mind during those critical months.

23 On the question of reasonableness, you will recall  
24 at one point in the trial I excluded certain evidence on the  
25 ground that state of mind was the only issue, and that after

a recess and having been chastised by my law clerk, I reversed myself and told you that the evidence was admissible not only as to state of mind, but as to its reasonableness.

As to that I want you to understand that every time I use the term good faith, either in this charge or in the questions submitted to you, I mean good faith reasonably arrived at.

Thus, deciding whether the defendants acted in good faith, you must apply two tests: First, did the defendants have the subjective belief that they had the lawful authority to make the inspection? First question. Did the defendants have the subjective belief that they had the lawful authority to make these inspections or to order them? Second, was it reasonable for them to have such belief in all the circumstances. Second, was it reasonable for them to have such belief in all of the circumstances?

Turning on the first element, namely subjective belief, by this it is meant, did the defendants in their own minds think they were acting with authority and pursuant to valid law.

THE FOREMAN: Would you repeat that?

THE COURT: Turning to the first element, namely subjective belief, by this it is meant, did the defendants in their own minds think they were acting with authority and

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2 pursuant to valid law.

3 Turning to the second element, of good faith, namely  
4 whether the defendants belief was reasonable, you should  
5 consider whether an ordinary reasonable person in the same  
6 position as defendants back in 1962, operating under the  
7 same circumstances, would have believed that the inspections  
8 were made with authority and pursuant to valid law.

9 In deciding that question, the fact that the New  
10 York Courts later found these three inspections to be  
11 illegal does not of course mean in and of itself that the  
12 defendants lacked good faith.

13 In other words, in determining whether the  
14 defendants in good faith believed in their lawful authority  
15 to make the inspections, you should consider this question  
16 in the light of the defendants themselves acting at the time  
17 when and under the circumstances in which they acted. You  
18 should not consider the reasonableness of the defendants'  
19 belief in the light of what happened after the entries and  
20 searches complained of.

21 We are not looking at this with 20/20 hindsight.  
22 We are putting ourselves in their position and what reasonable  
23 people in their position would have done or should have done.  
24 The question is, given the position the defendants tell us,  
25 the facts and circumstances existing at the time of the

2 searches and the general understanding of the law which  
3 governed such matters at that time, was it reasonable for the  
4 defendants to believe that their entry and search was proper  
5 and lawful?

6 Everything I have said to you regarding good faith  
7 must be applied by you separately with respect to each  
8 defendant on an individual basis. Obviously I can have good  
9 faith and somebody else can't have. It doesn't necessarily  
10 follow.

11 Let's take up the matter separately as to each  
12 defendant. Let's start with Johnson, the building inspector.  
13 He was the first man involved in the July 24 inspection. You  
14 will recollect his testimony. The principal issue as to him  
15 is whether he entered the premises as he viewed his own  
16 actions for the legitimate official purpose of checking out  
17 a possible ordinance violation or for the wholly impermissible  
18 purpose of showing his architectural friend interesting  
19 sights.

20 As to that, I must confess to you my own  
21 impropriety, at least as I view my duties, in expressing a  
22 view on that issue. You will recollect that at one point I  
23 sustained Mr. Stern's objection to one of Mr. Lubell's  
24 questions to the expert on the ground that there was no view  
25 of the evidence which would support a conclusion that

Mr. Johnson was entering for anything but an official purpose. I have since reconsidered and concluded that you may, if you wish, come to such a conclusion.

I'm not going to tell you that I have no view on the matter because if I told you that, you wouldn't believe anything else I say to you. But let me remind you in the strongest terms at my command that what I may think of the issues should have no possible influence on you.

I should have made my ruling, according to my view of my duties, I should have made my ruling at the side bar so you wouldn't have heard it. Please don't compound my error by paying the slightest attention to what I said on that subject.

While we are on the question of Mr. Johnson's architectural friend, no one contends that Mr. Johnson had any business bringing him on the premises. On the other hand, I do not understand that the plaintiffs claim any injury or damage because of the architect's presence. The architect's sole relevance to this case is this: Did Mr. Johnson go on the premises for the official reason of inspecting for possible ordinance violation and simply take advantage of the opportunity to show his companion an interesting building, or was the purpose of Mr. Johnson's entry a sightseeing one, and was all this talk of official

business an afterthought dreamed up after Mr. Johnson saw what he considered to be a violation?

That is the issue. And of course as I remind you, every time I say good faith, I mean reasonable good faith.

There's been a lot of dispute here as to whether there was in fact a violation. Let me try and put that in perspective. It doesn't make any difference to the actual propriety of defendants' actions either before or after the Court of Appeals spoke in 1964 whether or not plaintiffs were in actual violation of the ordinance. The whole purpose of the ordinance purporting to authorize entry is to permit the building inspector to resolve that question.

The extent or lack of the actual violation can only be relevant, if you find it so, to the question of defendants' reasonable good faith. Let me give you an example.

Supposing a building inspector should force his way into Mrs. Jones' barn. Mrs. Jones, I may tell you has nothing to do with this case, and the building inspector is not Mr. Johnson. Supposing a building inspector should force his way into Mrs. Jones' barn, find everything in absolute order and be able to point to no cogent reason for believing her to have done anything wrong.

Such an inspector may point out that the ordinance

doesn't require any evidence of wrongdoing, all it requires that it be his official purpose to find out. To which a jury might reply, that's all well and good, but you don't go around forcing entry into everybody's barn, but therefore suspect you must have had some other motive, and we reject your claim to have been acting in good faith.

I don't suggest my example is in any way relevant here, but I give it to you in the hope of clarifying the point. All this evidence as to whether there was a violation has nothing to do, neither establishes or rebuts. It has whatever bearing you think it should have on the question of good faith.

As to Mr. Johnson, if you find his initial entry was not in good faith, or that he had failed to bear his burden of proof on that issue, why, you would have to answer the first question no as to him, because everything else followed from that premise as far as he is concerned. If, on the other hand, you find the initial entry to have been in good faith, you will then consider whether anything in his subsequent actions causes you to modify your conclusion.

Next let us consider Messrs. Leach, Mackay and Despard, the three trustees who did nothing, so far as we are aware, but vote. As to them, the questions are: Do you believe that at the time they voted they believed their vote

for inspection was justified? Two, in light of Johnson's report and the Village attorney's advice, was it reasonable for them to believe they were justified in so voting?

At this point let me point out that if you should have made a "no" finding as to Mr. Johnson on his first initial entry, that would have no effect on the other defendants unless you found that they were aware of Mr. Johnson's impropriety.

In other words, if you should find that Mr. Johnson went in to show his architect a sightseeing thing which he has no more business doing than anybody else has, that would produce an answer "no" with respect to Mr. Johnson. It would have no bearing on the others unless you found they knew about it, or reasonably should have known about it.

As far as I recollect, there is no evidence to suggest that, but that is entirely up to you. You may remember something that I don't.

The question as to the voting trustees or the trustees who voted, is simply did -- boils down to, did Mr. Johnson's report give them a good faith reason for doing what they did.

And just let me read it to you, "This morning I was passing the Laverne property and took the opportunity of entering it for an inspection, since it had been indicated

to me by Mr. John Martin that a number of men seemed to be working in a commercial enterprise daily. Walking through the building confirms this complaint. It is a bona fide small production setup, including vats, rolls of paper, coloring mats, large quantities of combustible solvents in several locations and assorted miscellaneous equipment.

"Three men are apparently employed there. The leader, Ruby, and one of the others did state that they were employed by Mr. Laverne and they all agreed that the art work -- it's very bad writing -- "that they did art work as well as the emergency flood control that they were actually working on while I was there.

"I was accompanied by an architect" (reading illegible exhibit) -- I can't read his name -- "who witnessed all of the above. This appears to me be a" -- something -- "violation of our second ordinance. However, I believe there has been previous contact with the Lavernes on the subject and they have been given a" -- something -- "I don't want to stir up anything.

"The operation is quiet, completely internal, and on previously attempted inspections I have seen no signs of life. I await your advice as to your wishes in further procedure in this matter."

And that was addressed to the mayor and trustees.

If you read it, you will have the same difficulty I have in making it out.

That is what was before the trustees, and your question is, in the light of everything you heard about the state of the law at that time, were they justified in thinking -- in the first place, did they think, that is your first question, did they inside themselves believe that they were acting properly in ordering an inspection, and B, were they justified in so believing.

Next, the mayor and the deputy mayor. Of course if you have answered "no" as to the other trustees, in other words, found against the defendants as to the other trustees, your answer must be the same as these two. They voted, and if the vote was enough to make your answer acting in bad faith, you don't have to go any further. Otherwise, taking all the evidence into consideration the question is, do you conclude that they were reasonably acting in good faith in everything they did. It seems to me the evidence is fresh enough in your minds, I don't need to review it.

Finally, Sergeant Meehan. The question is, did he in good faith think he was carrying out orders he was required to carry out, or to put it more accurately, did he sustain his burden of satisfying you that such was the case. That is the whole question on Sergeant Meehan. Did he in good faith think he was carrying out orders he was required to carry out,

2 or putting it more accurately, did he sustain his burden of  
3 satisfying you that such was the case.

4 Let us then turn to the question of malice. In  
5 discussing and in starting to discuss malice, I did not wish  
6 to express any opinion as to whether or not you should reach  
7 that question. By talking about malice I don't mean to  
8 suggest that you should reach that question, and by telling  
9 you I don't mean to suggest that, I don't mean to suggest  
10 that you shouldn't.

11 As to malice, should you conclude that the  
12 defendants, one or more of them individually, good faith  
13 has to be individual, and by hypothesis malice has to be  
14 individual, were not acting in good faith when they did  
15 the inspections, you will then consider whether they were  
16 acting with malice toward the plaintiffs.

17 The fact that you found the defendants were not in  
18 good faith, would not mean of course that they were necessar-  
19 ily acting with malice. You must consider whether they were  
20 acting with malice in light of what I am about to instruct  
21 you.

22 The law permits a jury under certain circumstances  
23 to award punitive or exemplary damages in order to punish the  
24 wrongdoer for some extraordinary misconduct and to serve as  
25 an example to others not to engage in such conduct.

1  
2           If you should find that the conduct of the defen-  
3 dants was maliciously or wantonly or oppressively done, then  
4 you may in the exercise of discretion choose to do so, award  
5 punitive damages.

6           An act or failure to act is maliciously done if  
7 prompted or accompanied by ill will or spite or a grudge  
8 toward the injured person.

9           An act or failure to act is wantonly done, wanton  
10 or malicious are two different words but they both wind up  
11 to malice, if done in reckless or callous disregard of the  
12 rights of the injured person.

13           An act or failure to act is oppressively done if  
14 done in a way or manner that injures or damages or otherwise  
15 violates the rights of another person with unnecessary harsh-  
16 ness or severity, as by misuse or abuse of authority or power  
17 or by taking advantage of some weakness or disability or  
18 misfortune of another person.

19           These are legal definitions I am reading to you.  
20 If you find malice as defined by law, you may go on to award  
21 to the plaintiffs and against the defendants what the law  
22 calls punitive or exemplary damages.

23           Punitive damages are not dependent upon or measured  
24 by any actual damage or injury suffered by the plaintiffs.  
25 Their purpose is not so much to compensate the plaintiffs

as to punish the defendants for having committed a deliberate or reckless act in violation of law and to deter them and others from engaging in such conduct in the future.

The amount of punitive damages to be awarded is entirely within your province, and in awarding such damages you should bear in mind the principle that the amount of the damages should be commensurate to the seriousness of the defendants' acts.

As you saw I was just reading there. Did I make myself clear, because I was talking down. Did everybody hear me?

Of course malice or lack of it is an individual matter and if you should make such a finding as to one or more of the defendants, you would have to separately consider what punitive damages should be assessed against each.

In the question of punitive damages, I think there are kinds of principles of law that these people were acting under that you should probably know. You will recollect that, and it was brought out in the summation, that all the defendants at one point or another, or some of them, said we thought it was our obligation to take this action.

There is a general doctrine about zoning ordinances which you may find relevant to their state of mind in that respect. That is, if you have got a zoning ordinance, you

you have got to enforce it or you lose it.

In other words, if I have a house and you are my neighbor, they can't enforce against you and not against me. And if you don't enforce a zoning ordinance, you run the risk of losing it.

I'm not saying that they would have lost it if they didn't do this particular thing. That is something which you may consider was going on in these defendants' minds. And that kind of distinguishes the situation between now, meaning '62, and '56. Because in '57 all they had was no complaints but letters to the Lavernes and no answer; nothing.

Here when the trustees were meeting they had this report before them. They may have, you are entitled to wonder on the question of malice, because the reason it comes up is, the report says nobody is doing any harm, I don't want to cause any trouble. That is what Johnson says. Certainly quiet, I don't want to raise a rumpus. And you may say then, why the devil didn't they follow Johnson's advice and leave the matter alone.

I just want you to be aware that that is a doctrine of law. There are certainly things not involved here. That is, whether we approve or disapprove the Court of Appeals' decision decided in 1964, that's the law.

Another thing not involved here is whether we

1 approve or disapprove of the ordinance. As I recollect, most  
2 of us are City dwellers and we are not concerned with that  
3 kind of ordinance. That is neither here nor there.

4  
5 It's an ordinance and the trustees of Laurel Hollow  
6 have just as much obligation to abide by their ordinances of  
7 Laurel Hollow as I have to abide by the statutes of the  
8 United States. It doesn't mean that I am entitled to  
9 violate them either, nor are they, unless they do it in good  
10 faith. And they are not entitled to it then.

11 And that is the question here of damages in this  
12 situation. Nor are we interested in the wisdom or unwisdom,  
13 whether it's too strict or too lenient or anything else of  
14 that decree that was gotten back in '54, I believe it was,  
15 from the Supreme Court of Nassau County, modified and  
16 affirmed. All that you heard about. Those are the terms of  
17 this decree and the trustees had the obligation to enforce  
18 it as were advised.

19 One thing, there's been talk about advice of  
20 counsel. Apparently, at least you can infer, at least  
21 counsel has asked you to infer and whether you do or not is  
22 up to you, they took these actions on the advice of  
23 Mr. Platt, who was then Village counsel.

24 Advice of counsel is certainly relevant, it's not  
25 a defense. In the first place, you have got to ask yourself,

did they actually act on that advice, and in the second place, was it reasonable to act on that advice.

That is what this expert was all about. I can't say my lawyer sent me to do something, if you knew perfectly well I couldn't do it. I can't defend on the ground my lawyer said so, if you conclude I did it before that, but I just went to him to get cover. Nor can one defend on the advice of a lawyer, if you conclude that I should have known better than to take such advice.

So on the advice of counsel, the question is on all the evidence, did they in fact act on his advice and was it reasonable of them to do so, and if you conclude yes to those questions, you can consider it both as a defense to good faith.

That, ladies and gentlemen, is I think what you should hear. In a few minutes I will find out whether you should hear some more or not. You may retire.

(The jury left the courtroom.)

THE COURT: First the plaintiff.

MR. LUBELL: Your Honor, I request that in addition to the instructions that you did give, that you charge the jury in the following respects: One is that you advise the jury that the expert was called and testified for the defendants.

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2 THE COURT: Are you under the impression they don't  
3 know that?

4 MR. LUBELL: I request that it be.

5 THE COURT: I'm not going to make myself a fool.  
6 Do you want me to tell them this witness was called by the  
7 defendant when they saw Mr. Stern put him on the stand?

8 MR. LUBELL: Secondly, your Honor --

9 THE COURT: You have an exception.

10 MR. LUBELL: I assume that I have the exception.

11 Secondly, I request that the charge regarding good  
12 faith in terms of a subjective belief and a reasonable basis  
13 for believing in lawful authority, that you also charge that  
14 there must be a subjective belief and a reasonable basis for  
15 belief that the acts were proper, which I believe my request  
16 is that the sense of proper is something different than  
17 lawful authority. Something less than probably cause but  
18 something different than lawful authority. On that basis is  
19 Judge Medina's decision in Bivens.

20 THE COURT: I thought I said that, but if you have  
21 doubt, I will make that clear.

22 MR. LUBELL: In regard to the report of Johnson,  
23 since your Honor read the report and went into some detail  
24 on it, I request that you charge the jury is to review the  
25 evidence as to whether any of the defendants talked to

Johnson before the board meeting on September 24 or whether this was the only thing that they had before them.

THE COURT: I think I told them this is what they had. I don't recollect any evidence that they talked to him before.

MR. LUBELL: My recollection is different.

THE COURT: Then I won't say anything about it, if we have different recollections.

MR. LUBELL: My recollection is that Mr. Corning and Mr. Dubosque testified that they had spoken, they believe, to the best they recollect, is that they had spoken to Mr. Johnson.

THE COURT: My recollection is different. What's yours?

MR. STERN: The same as your Honor's.

THE COURT: I will tell them their recollection counts.

MR. LUBELL: In regard to the Johnson memorandum, they should consider what is set forth in the memorandum, as contrasted in his testimony as to what he did see on July 24.

THE COURT: I don't recollect any difference and I don't see any point in it.

MR. LUBELL: Your Honor, further in regard to the Corning and Dubosque, the mayor and deputy mayor, as to the

September 24th board meeting and the October 18th search, I request that your Honor charge that Mr. Corning, if the jury finds that Mr. Corning believed that he had the authority to enter as the mayor --

THE COURT: That is a lot of nonsense. I heard what you said and I won't charge it.

MR. LUBELL: I also request that the same charge be made with respect to Mr. Dubosque as the deputy mayor.

THE COURT: Complete idiocy. A lot of nonsense.

MR. LUBELL: The basis on which I made those statements was specific questions and answers --

THE COURT: The questions were nonsensical. You mean to say you want the jury -- these fellows are laymen, they are advised by their lawyer to go ahead, do you want the jury to psychoanalyze them as of 12 years ago to find out whether they are going as mayor to help the building inspector or some other way?

MR. LUBELL: I wanted the jury to recall the testimony in which Mr. Corning said he went in there as mayor --

THE COURT: You summed up the testimony. They will remember everything you said.

MR. LUBELL: I am requesting, but you made some reference, just a brief reference, the reference itself I

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2 have no disagreement to Mr. Corning and Mr. Dubosque. I am  
3 asking in addition to that reference, the statement that if  
4 they went in --

5 THE COURT: They heard your argument. I told them  
6 it's up to them to decide.

7 MR. LUBELL: Your Honor discussed the obligation to  
8 take this action, to take some action regarding the situation.  
9 I request that you instruct the jury that that did not mean  
10 that they had an obligation to conduct searches or to conduct  
11 inspections without consent.

12 Because I believe that there was some ambiguity,  
13 I'm sure your Honor didn't mean that, but there was some  
14 ambiguity as to what that meant.

15 THE COURT: If there was any ambiguity, I will  
16 certainly clear it up.

17 MR. LUBELL: Your Honor, you also stated in regard  
18 to 1957 correspondence that there was no answer from  
19 Mr. Laverne. I believe, your Honor, it must have just  
20 slipped your mind, that there was an answer from Mr. Laverne  
21 in which he said I am not consenting to an inspection.

22 THE COURT: I said no satisfactory answer, but if  
23 anybody got the impression that I was saying there was no  
24 answer, I will certainly correct that.

25 MR. LUBELL: Further, your Honor stated that the

question of the obligation to take some action was relevant to the issue of malice. I merely request that it be pointed out more forcefully that it is not to be considered in their determination of good faith.

THE COURT: I made that clear. I'm not sure you are right that I have to do that, but I made it clear.

MR. LUBELL: If I can have a moment.

(Pause.)

MR. LUBELL: Finally, your Honor, I would request that you charge the jury that the Equity Court which had issued the injunction did have continuing jurisdiction and that application could have been made for an inspection.

As to whether permission would have been granted by that Court is something that nobody could say, but that they did have continuing jurisdiction and application could have been made.

THE COURT: I thought that was clear, but I will make that clear.

MR. LUBELL: Thank you.

MR. STERN: Just to finish that thought before getting to my own requests, your Honor. I take it your Honor will in clarifying it inform the jury that an inspection order would not necessarily follow.

THE COURT: I think that is irrelevant. All he is

1 entitled to tell them is they had the opportunity to make the  
2 application. I am not going to speculate on what would  
3 happen.  
4

5 MR. STERN: Of course not, your Honor. But the  
6 implication has been left on summation that it would flow  
7 as the night follows the day.

8 THE COURT: I'm not going to get into that.

9 MR. STERN: I respect to that.

10 Your Honor did touch on the question of what would  
11 would happen if the jury found any one of the defendants not  
12 in good faith, that would put the ball in your lap again, I  
13 think your language was, or close to it.

14 Your Honor, I specifically request that you expand  
15 on that charge in the language that was submitted yesterday,  
16 namely in determining the question of good faith of the  
17 defendants, and each of them in this matter, you should be  
18 aware of the following, if you should find that the defen-  
19 dants or any one of them did not act in good faith, there  
20 will be other proceedings which are none of your concern to  
21 determine whether or not the lack of good faith resulted in  
22 any injury to either of the plaintiffs.

23 THE COURT: That would be misleading because those  
24 other proceedings are going to follow whichever way they find.

25 MR. STERN: Depending --

THE COURT: There are going to be proceedings before me. The plaintiff is going to argue that Judge Medina's case doesn't cover it and you are going to argue it does. So that will only be misleading.

MR. STERN: I would say this, if your Honor please, if they come back with a verdict of good faith, the question of whether you are going to vacate Judge Medina's order or not as to any one defendant becomes academic.

THE COURT: No, it doesn't. That is the only time that the Judge's Order has any relevance, if they come in with a good faith.

MR. STERN: I think we are saying the reverse.

THE COURT: If they come in with a good faith verdict, then I have got to consider whether Judge Medina's Order is right or not. If they come in with a bad faith verdict, then I have nothing to worry about.

You said I will only have further proceedings if they come in with bad faith. That's not true. I have further proceedings on any.

MR. STERN: On damages.

THE COURT: If they come in with bad faith, I am going to have damages. If they come in with good faith, I am going to have a proceeding on whether there are damages.

Certainly the jury knows that you want good faith

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and he wants bad faith. I don't have to tell them that, any more than I have to tell them that the expert was called by you.

All right. I think I will make it clear the opposite of what you want me to make it clear, that I have to take further proceedings whichever happens, if that wasn't clear.

MR. STERN: Oh, that was clear.

THE COURT: If that was clear, it's all right. Ask them to come back.

MR. STERN: I have no exception to that portion of your Honor's charge.

THE COURT: You have an exception to my failure to go further.

MR. STERN: Yes, your Honor.

(Jury present.)

THE COURT: Ladies and gentlemen, I don't think I am going to make any changes, because I think what I have said I have already made clear, but in the course of my life I have found on occasion when I thought I made something clear, others disagreed with me.

In the first place, you have to find good faith, if you really believe they were lawful, et cetera. I thought I also said that they had to be proper. Of course if they

thought they were doing something improper, even though it was lawful, you can consider that on the question of good faith.

I thought I made that clear. When I talked at the very end about this obligation, you know, that they might feel they were under, I certainly hope I didn't give the impression that that obligation in and of itself excused them from doing anything illegal.

They were certainly under no obligation to do any particular thing; they were certainly under no obligation to make this particular search. All that they were under an -- and you may not consider they thought themselves under obligation to anything.

All I referred to that piece of law about was to give you a background for answering the question that might have occurred to you, why didn't they take Johnson's advice and just let the people alone.

Just to get back to the very beginning, nobody has any question, the Court of Appeals has laid that to rest, has any question that what they did here turned out to be wrong. There is no question about that.

There is no question that they had options which they didn't take. They could have gone to a Court of Equity and asked for an order to enforce that previous decree and

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2       they could have gone to a Magistrate or some judicial house  
3       and asked for a warrant. We wouldn't have been here if they  
4       had. The question is, did they act in good faith as I have  
5       described it to you in acting as they did, or with malice.

6               Just a few housekeeping details. You can write  
7       anything you want on these documents. The clerk has the  
8       original, and when you arrive at a verdict you will execute  
9       and mark your answers on the original which he has. You can  
10      use these documents for scrap paper or any other way you find  
11      it helpful.

12             Your decision must be unanimous. Another thing  
13      that is different from across the street. Across the street  
14      it can be six to five. Here it must be unanimous.

15             Any time you want evidence read, you just ask for  
16      it. If at any time you feel you want me to repeat any part  
17      of my charge or explain it further, just send a note by the  
18      clerk, and it will be done. If you want an exhibit, just  
19      ask for it.

20             If you ask for evidence, don't expect instant  
21      replay, because naturally the question wasn't asked with  
22      your particular question in mind, and we will have to do  
23      some scouting around to figure out what part of the record  
24      should be read. So go on with your deliberations. It may  
25      be a half hour or longer before we get together with the

reporter and the lawyers.

One more thing. Maybe, I am not suggesting you will, maybe at some point on some issue you become deadlocked and you may want some advice from me as to how to resolve that deadlock. Should that happen, and I'm not suggesting it will, but should it happen, don't tell me how you stand. I don't mind you telling me we are five to one or four to two or anything else. But don't tell me in which way.

The reason is obvious. It will be my obligation then to reason with you and suggest ways of maybe resolving your difficulties. If I know you are five to one for one side or the other, there are no form of words that I can fashion to fail to get the other one to go over to the majority. If I don't know, my wording will just be to help you form a verdict.

Any further comments?

MR. LUBELL: No, your Honor.

THE COURT: Ladies and gentlemen, the marshals will take you to lunch. When you are finished they will return you to the jury room and you can start your deliberations. Other proceedings will be going on in this courtroom this afternoon but you have priority.

The alternates are excused.

(The two alternates were excused and left the

courtroom.)

(At 12:40 the marshal was duly sworn.)

(The jury left the courtroom.)

THE COURT: I want to spread upon the record the agreement that was reached in the robing room to the effect that in the light of the strain on the marshals' resources by the criminal cases going to the jury today, the parties have stipulated and agreed that the Clerk of the Court can act as a marshal for taking care of the jury's wants and needs after the jury has been brought back.

Counsel further stipulate, although they don't know it, that the swearing of the marshals has been waived.

(Note received.)

(Court Exhibit 3 marked.)

(In the courtroom in the presence of the jury.)

THE CLERK: Madam Forelady, has the jury agreed upon a verdict?

THE FORELADY: No, unfortunately not.

THE COURT: The reason I called you in was that I thought, reconsidering my logistics, it would be probably better in you haven't reached a verdict at about 6:00, to send you home and have you come back Monday morning. That kind of gives you a better weekend than keeping you here Friday night.

Sometimes when it is difficult to agree it is helpful to break it up and have thoughts regroup. That was the only point of sending for you, to let you know, unless around 6:00 you think within a reasonably short time you can resolve whatever problems you still have, I will just send you home and give you the usual charge about not discussing the case in the absence of each other and you can return Monday.

Can I be of any assistance to you?

THE FORELADY: We have a question, your Honor, in our minds. We have come to a deadlock about one question. We felt maybe if we asked you a question, you could assist us.

THE COURT: Did you formulate a question or would you like to?

2 THE FORELADY: I'd like to formulate it. We were just  
3 about ready to do it when you called us in. May I ask you,  
4 would we be doing this just to you or in front of everybody?

5 THE COURT: In front of everybody.

6 (The jury left the courtroom to resume deliberations.)

7 (At 6:00 PM a note was received.)

8 THE COURT: The note reads: "The fact that the  
9 building inspector invited the architect to go on the premises  
10 and failed to identify himself as soon as possible, is this  
11 pertinent to the decision?"

12 Well, the answer to that is what they conclude is  
13 his reason for not identifying himself. I will explain that to  
14 them. And after I have done so we will have a conference at the  
15 side bar in which you can make any further suggestions.

16 Would you bring the jury in, Marshal.

17 (The jury entered the courtroom.)

18 (Court Exhibit 4 marked.)

19 THE COURT: The question is: "The fact that the  
20 building inspector invited the architect to go on the premises  
21 and failed to identify himself as soon as possible, is this  
22 pertinent to the decision?"

23 Like most questions of that kind, the answer is, it  
24 all depends. It depends on what your judgment is as to his  
25 reason for not identifying himself sooner. As I recollect his

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2 version of the testimony, and I guess there is no other version,  
3 his version of the testimony of that he had been passing the  
4 place on several other occasions after this conversation with  
5 the neighbor, Martin, I think the neighbor's name was, his  
6 conversation with Mr. Martin and he had looked at the premises  
7 and seeing nothing, the doors locked and no way to clarify  
8 one way or another this complaint. And that on this occasion,  
9 having been a storm, he rode by and he saw the door open and  
10 thought this would be a good opportunity to check out this  
11 complaint, and he went in.

12 And, as you recollect, of course, the fact that I  
13 remember the testimony this way obviously is not controlling.  
14 As I remember it, he looked around for somebody to talk to and  
15 found nobody, and all of a sudden, heard some sort of sound  
16 or a light, or something -- I can't remember the details --  
17 and found these men working, and immediately began to commiser-  
18 ate with them and then walked back towards the main part of  
19 the house; and at one point Rudy said to him, "are you the  
20 broker?", and he said "No, I'm the building inspector." And  
21 I don't know that he ever identified his architect friend.  
22 I'm not even sure where the architect friend was at that point.  
23 And then they had the conversation. And then he said, "if  
24 you are the building inspector, go out."

25 If you come to the conclusion that he did that to

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2 conceal his status for some ulterior motive in order to  
3 disarm or deceive Rudy, why, then, I should think that would  
4 be most significant bearing on your judgment whether he was  
5 acting in good faith.

6 But, on the other hand, if you come to the conclusion  
7 that he just saw the opportunity to effect the inspection and  
8 didn't really think one way or another whether it would be  
9 objected to or wouldn't, he just walked in and began talking  
10 about the first thing that seemed important at that instant,  
11 which is the problem that they were having, and just didn't  
12 identify himself because it didn't occur to him that it was  
13 necessary until the question of who he was had arisen, and he  
14 said, "no, I'm the building inspector," if that is your con-  
15 clusion, I would think it would have minimum, if any, pertinence  
16 to the decision.

17 Does that answer your question from your point of  
18 view?

19 THE FORELADY: Yes.

20 THE COURT: I am going to ask counsel to come to the  
21 side bar.

22 (At the side bar.)

23 THE COURT: First the plaintiff.

24 MR. LUBELL: I would request that your Honor indi-  
25 cate that the question of whether he identified himself when

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2 he came in and the fact that the architect accompanied him  
3 may be considered by them in determining whether, when he  
4 came in his state of mind was, he was coming in as the  
5 building inspector or on the tour.

6 THE COURT: That is not the question they asked me.  
7 Declined. You have your exception.

8 MR. STERN: I think your Honor covered it adequately.

9 (End of side bar discussion.)

10 THE COURT: Now, ladies and gentlemen, as to logis-  
11 tics, what would be your pleasure? Are you in a situation  
12 where I ought to give you 20 minutes or so and decide whether  
13 to let you go, or should I let you go now?

14 Why don't you go out and let me know whether I  
15 ought to let you stay until 6:30 or whether I should let you  
16 go now.

17 (The jury left the courtroom.)

18 (Continued on next page.)

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(At 6:10 PM a note was received from the Jury.)

(In the courtroom in the presence of the jury.)

THE COURT: Do counsel waive calling the role?

MR. LUBELL: Yes, your Honor.

MR. STERN: Yes, your Honor.

THE CLERK: Madame Forelady, has the jury agreed  
upon a verdict?

THE FORELADY: Yes.

THE CLERK: Would you read off the verdict, please.

THE FORELADY: ON the first question, shall I  
read the entire question?

THE COURT: No, just the answers to the questions.

THE FORELADY: Hugh Johnson, Building Inspector,  
yes. Orin Leach, Trustee, Yes. John Mackay, Trustee,  
yes. Douglas Despard, Trustee, yes. Howard J. Corning,  
Jr., Mayor, yes. Edward J. Meehan, Police Sergeant, yes.  
Yes on all counts. As a result, we did not bother with  
2 and 3.

Hutchinson Dubosque, Deputy Mayor, Police  
Commissioner, Trustee, yes. As a result we did not  
do anything on 2 or 3.

THE COURT: Ladies and gentlemen, it is not  
my practice to comment on verdicts, because I consider it  
none of my business beforehand. It doesn't become my

business after you have reached a verdict.

I do want to express my appreciation for the obvious conscientious attention you have given to this case. It was obvious during the proceedings that you carefully listened to everything that was going on and the nature of your deliberations underlines your conscientious work.

All I can say is that I hope you get the feeling of satisfaction which the performance of important work in a conscientious manner should give you, because the work that you do and those like you is what makes the judicial system tick, and in my view is the proper -- particularly at this time -- the proper functioning of the jury is one of the most important elements in this country.

You are excused.

(The jury was discharged and left the courtroom.)

MR. STERN: I make the statement that I will at my first available opportunity, I have a court schedule on Monday and Tuesday, and Mr. Shaw, who represents the village, a partner of Breed, Abbott, I think will be back by the middle of the week from his vacation. I will make an effort to discuss it with him and report to your honor or ask him to report to your Honor.

THE COURT: No, I don't care to hear from him. All I want to hear from you two and let Miss Pessin know two

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weeks from Monday, this coming Monday, whether or not you have been able to settle the case.

MR. STERN: Your Honor, may somebody else in the office do that?

THE COURT: Yes, anyone.

MR. STERN: I have an appointment in the Court of Appeals.

THE COURT: I don't care how Miss Pessin gets the information.

MR. STERN: I just wanted to be sure.

THE COURT: You ought to know in two weeks whether you can settle the case or not.

Assuming that you can't, I will put it down for the second Friday to argue what follows from this decision. At that time I would like the plaintiff to have put in written form an offer of proof as to damages, having each item numbered, the type of damage, and the amount of the claim.

Then I will hear argument on point 1, whether the plaintiffs are entitled to any damages in light of the jury's decision on good faith, i. e. do I follow Judge Tenney or don't I. Point 2, assuming I follow Judge Tenney, what items of damage are they entitled to. I won't go into amount.

With that in mind, do you want to write more briefs

than you have written already, or do you want to rest on the briefs you have submitted to Judge Tenney?

MR. STERN: If it's all right with your Honor, we will review the briefs we submitted to Judge Tenney, and we submitted the same to you, and consider in the light of this development. My present tendency is that we will write another brief.

THE COURT: In view of the fact that you have the burden of proof, so to speak, because you are faced with Judge Tenney's order and prima facie I would tend to follow it, so you will serve on the plaintiff the first Friday in April and give my Chambers a copy, your brief, and then I will ask the plaintiff to serve his brief the following Thursday.

MR. STERN: Yes, your HONor. This is April?

THE COURT: This is all April. What I shall do then is, ultimately give you a decision. Of course, if the decision is that plaintiff is entitled to no damages, the next step is the Court of Appeals. It has nothing more to do with me.

If the decision is that the plaintiff is entitled to some but not all damages, then I will rule as to each item: "Paragraph 1 allowed; paragraph 2 disallowed," and so on. And then I will again give you an opportunity to settle.

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2 At that point you have the choice of either settling  
3 the whole action, allowing for the possibilities of appeal,  
4 and so forth, or you may settle what you agree that if the  
5 ruling stands the jury would likely give you and we will  
6 put that sum in and without prejudice to the right of either  
7 one of you to appeal.

8 The defendant appeals from my allowance and the  
9 plaintiff appeals from such items as I have disallowed. If  
10 you can't even agree on that amount, then we will have to  
11 empanel another jury to try that case. But I can't believe  
12 that would --

13 MR. STERN: Or submit it to a Referee or whatever.

14 THE COURT: But I can't believe that you cannot  
15 agree on what a jury would find, after my view of the law.

16 MR. STERN: With your Honor's help. This assumes,  
17 of course, the representation that the village --

18 THE COURT: Whatever the village does. You have to  
19 face up to the judgment. But as far as settlement is  
20 concerned, do the best you can.

21 MR. STERN: I will do the best I can.

22 MR. LUBELL: I just want to preserve my rights and  
23 make the usual motions at this time, or does your Honor --

24 THE COURT: It seems to me that your motions will  
25 be made on this argument.

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2 MR. LUBELL: The motions in regard to the verdict  
3 will be made on this argument?

4 THE COURT: You move on the usual grounds to set  
5 aside?

6 MR. LUBELL: Yes, and for a new trial, et cetera.

7 THE COURT: No reason you should not do it now, is  
8 there?

9 MR. LUBELL: No. My first motion is to set aside  
10 the verdict and enter judgment in favor of the plaintiffs  
11 or, in the alternative, to set aside the verdict and to grant  
12 the plaintiffs a new trial; and the second motion is to  
13 set aside the verdict and to grant a new trial on the law and  
14 on the evidence, as well as the exclusion of that particular  
15 area of proof.

16 THE COURT: Yes; and you renew all motions that  
17 were denied.

18 MR. LUBELL: Yes. all the motions, prior motions  
19 which were denied during the trial.

20 THE COURT: All right. Gentlemen, I learned a  
21 lot of Constitutional law.

22 (Time noted: 6:20 PM.)  
23  
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VERDICT SHEET

A-105

1. Were the defendants or any of them between the 24th of July and the 17th of December, 1962 acting in the good faith belief that they were carrying out the obligations of their respective offices, and acting pursuant to lawful authority? Answer "Yes" or "No" separately as to each defendant.

Hugh Johnson, Building Inspector  
Orin Leach, Trustee  
John Mackay, Trustee  
Douglas Despard, Trustee  
Howard J. Corning, Jr., Mayor  
Hutchinson Dubosque, Deputy Mayor,  
Police Comm. & a Trustee  
Edward J. Meehan, Police Sergeant

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2. With respect to any of the defendants as to whom the foregoing question was answered "No", did such defendant act with malice toward the Lavernes or either of them? Answer "Yes" or "No" separately as to each defendant.

Hugh Johnson  
Orin Leach  
John Mackay  
Douglas Despard  
Howard J. Corning, Jr.  
Hutchinson Dubosque  
Edward J. Meehan

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3. If the answer to the 2nd question is "Yes" as to any defendant or defendants, what punitive damages should be awarded as against each such defendant?

Hugh Johnson  
Orin Leach  
John Mackay  
Douglas Despard  
Howard J. Corning, Jr.  
Hutchinson Dubosque  
Edward J. Meehan

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*Court*

EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

MAR 7 - 1974

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*id*

**APPELLANTS' OFFER OF  
PROOF ON DAMAGES**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ERWINE and ESTELLE LAVERNE, :

Plaintiffs, :

-against- :

67 Civ. 2830

HOWARD CORNING, et al., :

Defendants. :

-----X

PLAINTIFFS' OFFER OF PROOF ON DAMAGE ITEMS

In response to the direction of the Court to prepare and file an itemized "Offer of Proof", and in accordance with the letter of Abigail Pessen, Esq., dated March 18, 1974, the following is plaintiffs' Offer of Proof:

1. In connection with the criminal proceedings brought by the Village of Laurel Hollow in the name of the People of the State of New York in which were admitted the fruits of the three entries and searches ultimately held illegal by the New York Court of Appeals, plaintiffs will offer proof of bills and payments to attorneys and legal printers in the amount of \$3,400.00. The Court of Appeals dismissed the informations on June 10, 1964.

2. In connection with the first contempt proceeding brought by the Village in which were admitted the fruits of the entries and searches of July 24 and October 18, 1962, and the

second contempt proceeding brought by the Village in which were admitted the fruits of all three entries and searches ultimately held illegal by the New York Court of Appeals, plaintiffs will offer proof of bills from and payments to attorneys in the amount of \$2,175.00. The Appellate Division, Second Department, reversed the contempt orders on July 12, 1965.

3. In connection with the penalty proceeding brought by the Village in which the contempt orders based on the building inspector's affidavits of the three entries and searches were the basis of the summary judgment obtained by the Village and subsequently reversed, plaintiffs will offer proof of bills from and payments to attorneys in the amount of \$4,500.00.

4. In connection with a proceeding brought by the plaintiffs against the Village and individual officials for prima facie tort and related tortious acts, the complaint of which was dismissed on February 15, 1969, plaintiffs will offer proof of bills from and payments to attorneys, legal printers and legal reporters in the amount of \$11,410.48.

5. In connection with an action brought by plaintiff Erwine Laverne against individual Village officials for a malicious prosecution conspiracy in connection with the criminal proceedings, which was dismissed on October 23, 1964, plaintiffs will offer proof of bills from and payments to attorneys in the amount of \$2,708.25.

6. In connection with an action brought by plaintiffs against the Village and individual officials to declare unconstitutional the zoning ordinances, which was dismissed on November 30,

1964, plaintiffs will offer proof of bills from and payments to attorneys in the amount of \$2,024.75.

7. Plaintiffs will offer proof that as a result of the entries and searches and the criminal, contempt and penalty proceedings brought on the basis of evidence illegally obtained in the said searches, they were subject to stress causing trauma and they were deprived of the use of their home as art studios resulting in serious impairment of plaintiffs' ability to create designs and concepts which subsequently would be embodied in income producing products.


8. Plaintiffs will offer proof of mental and emotional distress incurred by them as a result of the three entries and searches and further mental and emotional distress incurred by them as a result of the criminal, contempt and penalty proceedings brought on the basis of evidence illegally obtained in the three entries and searches.

9. Plaintiffs will offer proof that they were deprived of their Constitutional rights under the Fourth and Fourteenth Amendments to the U.S. Constitution by reason of the three entries and searches.

Respectfully Submitted,

Cohn, Glickstein, Lurio, Ostrin & Lubell  
Attorneys for Plaintiffs

By

  
Jonathan W. Lubell

OPINION OF JUDGE KNAPP  
DATED MAY 21, 1974

Erwine LAVERNE and Estelle Laverne,  
Plaintiffs,

v.

Howard J. CORNING, Jr., et al.,  
Defendants.

No. 67 Civ. 2830.

United States District Court,  
S. D. New York,  
Civil Division.

May 21, 1974.

Civil rights action was brought by property owners against various village officials who had played some part in inspections of their property. The District Court, Whitman Knapp, J., held that finding that building inspector and other village officials acted in good faith in believing that their inspections were lawfully authorized by village ordinance subsequently held unconstitutional constituted a complete defense to such action.

Complaint dismissed.

#### Civil Rights $\Rightarrow$ 13.10

Finding that building inspector and other village officials acted in good faith in believing that their inspections were lawfully authorized by village ordinance subsequently held unconstitutional constituted a complete defense to civil rights action brought by property owners against such officials. 42 U.S.C.A. §§ 1983-1988; U.S.C.A. Const. Amend. 4.

Cohn, Glickstein, Lurie, Ostrin & Lubell by Jonathan W. Lubell, New York City, of counsel, for plaintiffs.

Mudge, Rose, Guthrie & Alexander by Henry Root Stern, Jr., Thomas R. Esposito, P. Jay Wilker, New York City, of counsel for defendants

#### OPINION

WHITMAN KNAPP, District Judge.

The events underlying this civil rights case had their origin twenty years ago.

Since then something like a dozen judicial decisions have been entered on various aspects of the case. Village of Laurel Hollow v. Laverne Originals, Inc. (2d Dept. 1954) 283 A.D. 795, 128 N.Y.S. 2d 326, aff'd, 307 N.Y. 784, 121 N.E. 2d 618; People v. Laverne (1964) 14 N.Y.2d 304, 251 N.Y.S.2d 452, 200 N.E. 2d 441; Village of Laurel Hollow v. Laverne, Inc. (Nassau County 1964) 43 Misc.2d 248, 250 N.Y.S.2d 951; (2d Dept. 1965) 24 A.D.2d 615, 262 N.Y.S. 2d 622; Village of Laurel Hollow v. Laverne Originals, Inc. (2d Dept. 1965) 24 A.D.2d 616, 262 N.Y.S.2d 625, aff'd, 17 N.Y.2d 900, 271 N.Y.S.2d 996, 218 N.E.2d 703; Laverne v. Corning et al. (2d Dept. 1965) 24 A.D.2d 602, 262 N.Y.S.2d 711, appeal dismissed, 16 N.Y.2d 866, 264 N.Y.S.2d 103, 211 N.E.2d 523; Laverne v. Inc. Village of Laurel Hollow (2d Dept. 1965) 24 A.D.2d 842, 263 N.Y.S.2d 695; Laverne v. Inc. Village of Laurel Hollow et al. (2d Dept. 1964) 22 A.D.2d 826, 255 N.Y.S.2d 146, 25 A.D.2d 564, 267 N.Y.S.2d 756, aff'd, 18 N.Y.2d 635, 272 N.Y.S.2d 780, appeal dismissed, 386 U.S. 682, 87 S.Ct. 1324, 18 L.Ed.2d 403; Laverne v. Corning (S.D.N.Y. 1970) 316 F.Supp. 629; Laverne v. Corning (S.D.N.Y. 1972) 354 F.Supp. 1402. It is therefore my fond hope now to finally (naturally with the exception of an appeal) dispose of the matter.

The procedural history of the case can be briefly related:

In 1954 the Village of Laurel Hollow brought an action against Erwine and Estelle Laverne (or, more accurately, against their wholly-owned corporation) to enjoin the Lavernes from using property located in the Village in violation of a zoning ordinance that forbade commercial use. The Village alleged that wallpaper was being manufactured on the Laverne property. The Lavernes apparently did not dispute the allegation, but instead bottomed their defense on the doctrine of prior nonconforming use. This defense failed, and the resulting injunction was affirmed as modified by the Appellate Division, Laurel Hollow v. Laverne Originals, Inc. (2d Dept. 1954),

283 A.D. 795, 128 N.Y.S.2d 326, and by the Court of Appeals (1954), 307 N.Y. 784, 121 N.E.2d 618.

Years passed, during which time some correspondence was exchanged between the Village and the Lavernes indicating that the Lavernes' use of their property remained a sore point.

On July 24, 1962 the Building Inspector of the Village, Hugh Johnson, was driving by the Laverne property and noticed that the gate—normally locked—was open. His curiosity having recently been aroused by a neighbor's offhand comment to the effect that trucks were parading in and out of the Laverne driveway, Mr. Johnson drove in. A Laverne employee, unaware of Mr. Johnson's official status, showed him around. In the course of the tour Mr. Johnson discovered what to him appeared to be evidence that the Lavernes were violating the 1954 injunction—viz., vats, drying tables, etc.

Mr. Johnson reported what he had seen to the Village Trustees, and they voted to conduct a second inspection, which took place on October 18, 1962. Photographs taken by the Village officials were accidentally overexposed, and thus a third and final inspection occurred on December 17, 1962 for the purpose of taking additional photographs.

The Lavernes were not asked to consent to these inspections, the purported authority for them being derived from a Village Ordinance which provided:

"It shall be the duty of the Building Inspector, and he hereby is given authority, to enforce the provisions of this ordinance. The Building Inspector in the discharge of his duties shall have authority to enter any building or premises at any reasonable hour. (Art. X, § 10.1)"

There are conflicting versions of exactly what happened next (about which more will be said later) but it is undisputed that three separate criminal infor-

mations, two contempt proceedings and a penalty proceeding were brought against the Lavernes on the basis of the evidence obtained from the inspections. Judgments against the Lavernes resulted in every proceeding.

On June 10, 1964 the New York Court of Appeals, in a landmark decision, reversed Mr. Laverne's conviction on the three criminal informations on the ground that the Village ordinance which purported to authorize the three inspections was unconstitutional, and that therefore the fruits of those inspections could not lawfully be used against the defendant (14 N.Y.2d 304, 251 N.Y.S.2d 452, 200 N.E.2d 441).

Following that decision, the other judgments against the Lavernes were reversed.<sup>1</sup>

The instant suit was commenced in 1967 by the Lavernes against the various Village officials who had played some part in the three inspections. The complaint alleged that under 42 U.S.C. §§ 1983-88 plaintiffs were entitled to damages—basically the legal fees expended in connection with the above-described litigations—for the violation of their Fourth Amendment rights.

In 1970 both sides moved for summary judgment solely on the question of liability, and Judge Tenney granted judgment to the plaintiffs (316 F.Supp. 629). Judge Tenney's opinion held that the New York Court of Appeals' decision in *People v. Laverne*, *supra*, 14 N.Y.2d 304, 251 N.Y.S.2d 452, 200 N.E.2d 441 precluded any finding other than that the Lavernes' Fourth Amendment rights had been violated. Judge Tenney also held that the question of fact as to whether the Village officials had acted in good faith would not have to be resolved by a trial because good faith was not a defense to plaintiffs' action.

The following year, the Second Circuit Court of Appeals decided *Bivens v. Six Unknown Federal Narcotics Agents* (1972), 456 F.2d 1339, on remand from

1. During the same period the Lavernes had commenced three civil actions against the

Village. All three were dismissed for a variety of reasons, see cases cited *supra*.

the Supreme Court (1971), 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619. The Second Circuit held that federal narcotics agents are not immune from liability for violation of the Fourth Amendment rights of other persons, but that they may assert their good faith as a defense to actions brought by such persons.

On the basis of *Bivens*, the instant defendants moved to vacate Judge Tenney's order granting partial summary judgment to plaintiffs. Judge Tenney denied the motion (354 F.Supp. 1402). Judge Tenney expressed the view that *Bivens* was inapplicable to the case at bar, but ruled that as a matter of procedure it would be wiser to leave the question to the trial judge. Judge Tenney suggested that the question of good faith be tried and a special verdict employed.

In March of this year, the court adopted Judge Tenney's suggestion and the case went to trial solely on the question of defendants' good faith. As it turns out, the suggestion was a very valuable one, for the development of the record at trial manifestly has afforded the court a much fuller and more accurate picture of the pertinent events than the one earlier presented to Judge Tenney.

All defendants testified without material contradiction that—in substance—the discovery of the apparent violation of the 1954 injunction was the result of Mr. Johnson's poking around the property with the misinformed consent of the Lavernes' employee; and that once the violation was discovered, defendants believed they were authorized and indeed obliged to confirm its existence and have it corrected. The testimony also established beyond doubt that defendants' inspections had never intruded on any residential portions of the Laverne property but had been restricted to areas where plaintiffs' corporation was believed to be carrying on its business activities. In addition, defendants called as an expert Professor Norman Dorsen of the N.Y.U. Law School, who essentially testified that in 1962 only a clairvoyant could have realized that the defend-

ants' inspections would some day be declared to have violated the Fourth Amendment prohibition against unreasonable searches and seizures.

Neither Mr. nor Mrs. Laverne was able to testify to a single fact that might have tended to rebut the defendants' claimed good faith. The Lavernes' testimony centered upon the question of whether their own activities on the property had in fact constituted a continuing violation of the injunction or—as plaintiffs hotly contended—had merely been their private activities as professional artists. It was plaintiffs' contention that the equipment seen by defendants was so plainly that which one would expect to find in any artist's studio, that defendants' inference of violation drawn from that equipment was a fortiori evidence of defendants' bad faith. We cannot, of course, know whether the jury rejected the factual underpinnings of this argument or merely declined to draw the inferences urged by plaintiffs.

In any event the jury found specially that each defendant had acted in good faith, as that phrase was defined in the court's charge.

At the conclusion of the trial, the court invited defendants to make a motion for summary judgment on the ground that to the extent that plaintiffs' damages were expenses incurred in connection with the legal proceedings brought against them, such damages had not been "caused" in the legal sense by defendants' acts but rather by plaintiffs' insistence upon continuing to violate the village zoning ordinance and injunction. However, in view of the disposition being made of the main issue, the resolution of that question becomes academic. If good faith be a complete defense, no other question need be considered. For the reasons that follow, we hold that the good faith in which defendants were found to have acted is a complete defense to the action.

We begin with *Bivens*. There, as Mr. Justice Brennan describes it in his opinion remanding the matter to the Second Circuit, federal narcotics agents entered

Bivens' apartment early one morning without a warrant, manacled and arrested him, searched the entire apartment and then took him to the federal courthouse where he was questioned, booked, and strip-searched. Bivens subsequently brought suit in federal court seeking \$15,000 from each agent under the Fourth Amendment for the emotional damage he had suffered as a result of his warrantless arrest without probable cause. The district court had originally held that 1) the plaintiff had no federal cause of action under the Fourth Amendment and that 2) even if there were such a cause of action, the federal agents were immune from suit [276 F. Supp. 12 (E.D.N.Y.1967)]. The Court of Appeals affirmed on the first ground and thus did not reach the second (409 F.2d 718). The Supreme Court reversed, holding that the plaintiff did have a cause of action under the Fourth Amendment and remanded the case for a ruling on the immunity question (403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619).

On remand, the Court of Appeals held that the agents did not have immunity, but that they could assert the defense of good faith. The court stated (456 F.2d at 1348):

"It is a defense to allege and prove good faith and reasonable belief in the validity of the arrest and search and in the necessity for carrying out the arrest and search in the way the arrest was made and the search was conducted. We think, as a matter of constitutional law and as a matter of common sense, a law enforcement officer is entitled to this protection."

In so holding, the court noted that the defense of good faith is available in analogous § 1983 cases brought against state and local police officers, and that it was equally available in false arrest cases at common law. The court also observed that the law of "probable cause" was so complex and chameleon-like that it would be grossly unfair to

require police officers to act at their peril while trying to find their way in that "thicket."

The question before us is whether there is any sound reason to hold the reasoning of *Bivens* inapplicable to the case at bar. We think not.

All parties are in agreement that *Bivens* and the other pertinent authorities stand for the proposition that good faith should be permitted as a defense to a civil rights action if that defense could have been asserted in the most analogous tort action at common law. The sole disagreement is whether good faith could have been asserted in the closest analogue at common law to the instant action—namely, an action in trespass. Plaintiffs contend that it could not have been.

To support that contention, plaintiffs cite *O'Horo v. Kelsey* (4th Dept. 1901) 60 A.D. 604, 70 N.Y.S. 14, and *Socony-Vacuum Oil Co. v. Bailey* (Sup.Ct. Cattaraugus Co. 1952) 202 Misc. 364, 109 N.Y.S.2d 799. Neither of those cases involved trespass by a public official, and in our view they would not necessarily control in such a situation. Indeed it would appear that an action in trespass did not lie against a public official at all at common law because such officials were then cloaked with at least a qualified privilege. See, e. g. *Edwards v. Law* (2d Dept. 1901) 63 A.D. 451, 71 N.Y.S. 1097; *Remington v. State* (3d Dept. 1906) 116 A.D. 522, 101 N.Y.S. 952,<sup>2</sup> *Harper and James* (1956) Vol. I. The Law of Torts § 1.20. It was not until *Laverne v. Corning* was decided in 1962 that this privilege of public officers was challenged on constitutional grounds.

We are satisfied that the common law would have afforded these defendants the opportunity to establish that they inspected plaintiffs' property because they reasonably believed in good faith that such inspections were lawfully au-

2. Plaintiffs cite *Remington* for the proposition that good faith was no defense at common law. The decision specifically states

however that entry "under legislative authority" would not constitute trespass at all. 101 N.Y.S. 952, 954.

thorized by Article X, § 10.1 of the Village Ordinance (*supra* p. 4).

It then behooves us to consider whether there is anything contained in *Bivens* or in any other pertinent decision that would lead us to believe that good faith should not be a defense here. We read those decisions to require that the defense be permitted.

As already noted, the Court of Appeals in *Bivens* specifically recognized the unfairness of any rule that would force a police officer to predict at his peril future developments in search and seizure law.

The same point is stressed by the Supreme Court in *Pierson v. Ray* (1967) 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288. There the court squarely faced the question of whether good faith was a defense to a § 1983 claim brought by ministers who had been arrested while attempting to use segregated facilities in Jackson, Mississippi for violation of a "breach of the peace" statute subsequently held unconstitutional. Plaintiffs had sued under the common law of Mississippi for false arrest as well as under the federal civil rights law. The court held that good faith was a defense to the § 1983 claim (at 557):

"The defense of good faith and probable cause, which the Court of Appeals found available to the officers in the common-law action for false arrest and imprisonment, is also available to them in the action under § 1983."

In reaching that conclusion, the court observed (at 555):

"A policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does. Although the matter is not entirely free from doubt, *the same consideration would seem to require excusing him from liability for acting under a statute that he reasonably believed to be valid but that was later held unconstitutional on its face or as*

*applied.*" (fn. omitted, emphasis supplied.)

The holding of *Pierson* and its rationale were recently reaffirmed in *Scheuer v. Rhodes* (1974) 42 U.S.L.W. 4543, — U.S. —, 94 S.Ct. 1683, 40 L.Ed.2d 90. Mr. Chief Justice Burger, for a unanimous court, rejected the notion that state executive officers possess an absolute immunity from § 1983 liability. Instead the court suggested that a limited immunity is available to such officers (42 U.S.L.W. at 4548 [94 S.Ct. at 1692]):

"These considerations suggest that, in varying scope, a qualified immunity is available to officers of the executive branch of Government, the variation dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based. *It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances coupled with good faith belief, that affords basis for qualified immunity of executive officers for acts performed in the course of official conduct.* Mr. Justice Holmes spoke of this, stating:

"No doubt there are cases where the expert on the spot may be called upon to justify his conduct later in court, notwithstanding the fact he had sole command at the time and acted to the best of his knowledge. That is the position of the captain of a ship. But even in that case great weight is given to his determination and the matter is to be judged on the facts as they appeared then and not merely in the light of the event." (citations omitted.) *Moyer v. Peabody*, 212 U.S. 78, 85 [29 S.Ct. 235, 237, 53 L.Ed. 410] (1909)." (emphasis supplied)

In articulating the considerations relevant to a determination of the scope of an executive officer's immunity, the court relied upon the language we have

Cite as 376 F.Supp. 841 (1974)

quoted from *Pierson v. Ray* to the effect that a police officer should not at his peril be required to predict the future course of constitutional law.

Further support for permitting the good faith defense is found in *Tucker v. Maher* (2d Cir. 1974) — F.2d —.

There the court held that good faith may be asserted as a defense by a deputy sheriff in an action based on an unconstitutional attachment (at —):

"The only basis for Tucker's claim against [the deputy sheriff] is that the statute under which he proceeded was unconstitutional. It is well settled, however, that a peace officer cannot be charged with the responsibility of predicting the future course of constitutional law. *Pierson V. Ray* \* \* \*. In the absence of bad faith, it is therefore apparent that no action lies against [the sheriff] under § 1983. There is abundant authority for this proposition *even* where a warrantless arrest is made." (emphasis supplied, citations omitted.)

We emphasize the word "even" to illustrate that a warrantless arrest is obviously considered a more serious intrusion than an illegal attachment of property or an illegal trespass of the nature here involved.

In short, we do not read the cases to mean that a police officer who deprives a person of his liberty by arresting him or her can if later sued under § 1983 avail himself of the defense that he had a good faith, reasonable belief in the lawfulness of the arrest, but that a fellow officer who simply trespasses upon a person's property cannot be heard to claim that he acted with the good faith belief that his entry was lawfully authorized by statute or ordinance.

Considering this case as we must against the background of the common law, we hold that the jury's finding of good faith protects defendants from liability for

"acting under a statute that [they] reasonably believed to be valid but

376 F.Supp.—534v

that was later held unconstitutional".

*Pierson v. Ray*, 386 U.S. at 555.

In view of this disposition of the first question posed, the answers to the others become academic—and will remain so unless the Court of Appeals disagrees with the foregoing.

The plaintiffs' complaint is dismissed.

So ordered.



BAZOR EXPRESS, INC., a corporation,  
Plaintiff,

v.

The INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS  
OF AMERICA, and International Brother-  
hood of Teamsters, Chauffeurs, Ware-  
housemen and Helpers of America, Lo-  
cal Union No. 249, Defendants.

DANIELS MOTOR FREIGHT, INC., and  
Eazor Express, Inc., Plaintiffs,

v.

LOCAL 377, INTERNATIONAL BROTH-  
ERHOOD OF TEAMSTERS, CHAUF-  
FEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA, and Inter-  
national Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Help-  
ers of America, Defendants.

Civ. A. Nos. 68-1014, 69-1235.

United States District Court,  
W. D. Pennsylvania.

June 10, 1974.

Actions to recover against interna-  
tional and local unions for failure to  
meet their implied contractual obligation  
to use all reasonable means to termi-  
nate wildcat strike. The District Court,  
Teitelbaum, J., held that evidence fail-  
ed to establish that employer would  
have made profit during period of  
work stoppage if stoppage had not  
taken place and failed to establish that  
losses sustained by employer in 1969 and  
1970 were proximately caused by

DECISION OF COURT OF APPEALS IN  
PEOPLE V. LAVERNE, 14NY2d  
304 (1964)

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## Statement of Case

supply of housing accommodations. Owners of multiple dwellings may not legally be permitted to utilize them for the purpose of economic gain unless they are rendered sanitary and safe, but this has nothing to do with preventing an owner from demolishing the building at his election or from withdrawing his property from the rental market. This question was reserved in *Matter of Emray Realty Corp. v. McGoldrick* (307 N. Y. 772) and it is neither necessary nor suitable to decide it on this appeal where the question is not presented. The case of *Loab Estates v. Druhe* (300 N. Y. 176) is distinguished in the dissenting opinion in *Suppus v. Bradley* (278 App. Div. 337, 340) nor, insofar as I am aware, has this court ever repudiated the reasoning of that dissent insofar as withdrawal from the market is concerned.

Chief Judge DESMOND and Judges DYE, BURKE, SCILEPPI and BERGAN concur with Judge FULD; Judge VAN VOORHIS concurs in a separate opinion.

Order affirmed.

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THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v. ERWINE  
LAVERNE, Appellant.

Argued March 26, 1964; decided June 10, 1964.

Crimes—unlawful search and seizure—where injunction had been issued against carrying on unlawful business in residential zone and, pursuant to village ordinance, village Building Inspector entered premises and made observations which were basis of criminal prosecution against defendant for violations of ordinance, convictions were result of unlawful search—convictions reversed and informations dismissed.

A village ordinance authorized the village Building Inspector to "enter any building or premises at any reasonable hour" in discharging his duty to "enforce the provisions of" the Village Building Zone Ordinance and provided that a violation constituted disorderly conduct with a prescribed punishment. An injunction had been issued against the corporation, of which defendant was president, from carrying on the business or professional activity in which he was engaged—designing furniture, fabrics, wall coverings and similar materials—in an area zoned for residential use. On three occasions the village Building Inspector entered the premises and made observations after he got in, and these observations were the basis of three criminal prosecutions against defendant for violations of the ordinance. The convictions were the result of an unlawful search of defendant's home, and the judgment affirming the convictions is reversed and the informations dismissed.

## Points of Counsel

APPEAL, by permission of an Associate Judge of the Court of Appeals, from a judgment of the Nassau County Court, entered December 19, 1963, affirming judgments of a Court of Special Sessions held by a Police Justice of the Village of Laurel Hollow, Town of Oyster Bay (JAMES A. EISENMAN, J.), convicting defendant of violation of the Building Zone Ordinance of the Village of Laurel Hollow.

*Henry Mark Holzer and Phyllis Tate Holzer* for appellant. Each of the Building Inspector's three entries onto appellant's premises, without a search warrant, was made pursuant to section 10.1 of the Incorporated Village of Laurel Hollow Zoning Laws, which ordinance violates the Fourth and Fourteenth Amendments. The entry onto appellant's premises by the Mayor and Deputy Mayor/Police Commissioner without a search warrant similarly violated the Fourth and Fourteenth Amendments. Therefore, the ordinance is unconstitutional, the testimony introduced against appellant was evidence obtained as a result of unconstitutional search and seizure, *Mapp v. Ohio* (367 U. S. 643) controls, and appellant's convictions must be reversed. (*Agnello v. United States*, 269 U. S. 20; *Harris v. United States*, 331 U. S. 145; *Johnson v. United States*, 333 U. S. 10; *Trupiano v. United States*, 334 U. S. 699; *McDonald v. United States*, 335 U. S. 451; *Entick v. Carrington*, 19 How. St. Tr. 1029, 95 Eng. Rep. 807; *Boyd v. United States*, 116 U. S. 616; *Nueslein v. District of Columbia*, 115 F. 2d 690; *District of Columbia v. Little*, 178 F. 2d 13, 339 U. S. 1; *Adams v. New York*, 192 U. S. 585; *Burdeau v. McDowell*, 256 U. S. 465; *Federal Trade Comm. v. American Tobacco Co.*, 264 U. S. 298; *Davis v. United States*, 328 U. S. 582; *Gouled v. United States*, 255 U. S. 298; *Wolf v. Colorado*, 338 U. S. 25; *Marcus v. Search Warrant*, 367 U. S. 717.)

*William Cahn*, District Attorney (*Henry P. De Vine* of counsel), for respondent. All searches were lawful. (*Incorporated Vil. of Laurel Hollow v. Laverne Originals*, 307 N. Y. 784; *Frank v. Maryland*, 359 U. S. 360; *Eaton v. Price*, 364 U. S. 263; *District of Columbia v. Little*, 178 F. 2d 13, 339 U. S. 1; *Richards v. City of Columbia*, 227 S. C. 538; *Givner v. State*, 210 Md. 484; *Dederick v. Smith*, 88 N. H. 63, 299 U. S.

Opinion per BERGAN, J.

506; *Hubbell v. Higgins*, 148 Iowa 36; *Sister Felicitas v. Hart-ridge*, 148 Ga. 832; *Byars v. United States*, 273 U. S. 28; *Romero v. Squire*, 133 F. 2d 528, 318 U. S. 785; *Palmer v. United States*, 203 F. 2d 66; *Nuckols v. United States*, 99 F. 2d 353; *State v. Quartier*, 114 Ore. 657; *People v. Yarmosh*, 11 N Y 2d 397; *People v. Lane*, 10 N Y 2d 347; *People v. Loria*, 10 N Y 2d 308.)

BERGAN, J. An ordinance of the Village of Laurel Hollow in Nassau County authorizes the village Building Inspector to "enter any building or premises at any reasonable hour" in discharging his duty to "enforce the provisions of" the Building Zone Ordinance of the village (art. X, § 10.1). The ordinance provides that a violation of its mandate is disorderly conduct with a prescribed punishment (§ 10.2).

Defendant Laverne is a designer of furniture, fabrics, wall coverings and similar materials. The corporation of which he is president, Laverne Originals, Inc., is the owner of a large dwelling house, "the mansion of the old Tiffany estate" in Laurel Hollow in which the defendant and his wife live. For a long time a controversy existed between the village and defendant over his right to carry on this type of business or professional activity in an area zoned for residential use. Litigation some 10 years ago resulted in an injunction against the corporation (*Incorporated Vil. of Laurel Hollow v. Laverne Originals*, 283 App. Div. 795, affd. 307 N. Y. 784).

On three occasions in 1962 the village Building Inspector, acting under authority of the ordinance, entered the premises and made observations after he got in. These observations became the basis of three separate criminal prosecutions against appellant Laverne before the Police Justice of the village for violating sections 5.0 and 10.2 of the ordinance which prohibit and make it a criminal offense to conduct a business in a non-business zone. For the purpose of trial the three informations were consolidated and defendant was convicted on each charge and received a single six months' jail sentence which was suspended. The convictions were affirmed in the County Court, and defendant is here by permission.

The important question which the appeal brings here is the validity of that provision of the village ordinance which pur-

Opinion per BERGAN, J.

ports by public authority to sanction entry into private premises by an official without the consent of the occupant and, indeed, against his resistance, for the purpose of obtaining evidence for a criminal prosecution.

There are some slight differences in the facts surrounding each of the three separate entries by the Building Inspector, but all are substantially similar enough to be governed by the principle that entry was made, not by consent, but by the force of public authority. On two occasions, July 24 and December 17, 1962, there was objection by the persons on the premises to the inspector's entry; on the other occasion, October 18, 1962, the inspector was accompanied by the Mayor of the village and the Deputy Mayor, who was also a trustee of the village "in charge of police". A sergeant of police went to the scene with his superior but seems not to have entered the premises.

The degree of resistance to this last-described search is not certain in the record, but it is clear that there is no proof of consent and a submission to the power of public authorities in circumstances of this kind is not a consent (*People v. Loria*, 10 NY 2d 368; *Johnson v. United States*, 333 U. S. 10). Thus we treat all three entries into defendant's premises, resulting in the three criminal prosecutions, as having the same legal consequence.

Probably an entry into private premises by a public officer without a search warrant against the resistance of the occupant and in pursuance of the authority of law for the purpose of eliminating a hazard immediately dangerous to health and public safety is constitutionally valid if the purpose be summary or other administrative correction or as a foundation for civil judicial proceedings (*Frank v. Maryland*, 359 U. S. 360 [1959], rehearing den. 360 U. S. 914; *Eaton v. Price*, 364 U. S. 263 [1960]).

Appellant argues with some force that the history of the Fourteenth Amendment demonstrates that it was the intention of its framers to close out all searches of private property without judicial warrants and this regardless of whether the product of the search was utilized for a criminal prosecution or a civil remedy. (See, e.g., discussion by PRETTYMAN, J., in *District of Columbia v. Little*, 178 F. 2d 13, affd. on other grounds 339

Opinion per BERGAN, J.

U. S. 1; 1 Cooley, Constitutional Limitations [8th ed.], p. 611, n. 1; *Entick v. Carrington*, 19 How. St. Tr. 1029, 95 Eng. Rep. 807.)

But we do not have before us a search leading to summary administrative action or civil proceedings to preserve health or public safety, but rather official searches of private premises without a warrant which have become the bases of criminal prosecutions and convictions.

These are quite different things and, although we reserve until an appropriate case may come here the validity of a search utilized for civil action, we are of opinion that the searches by the public officers of defendant's home without warrants for the purpose of criminal prosecutions were to that extent in violation of his constitutional rights.

Reliance is placed by the People on *Frank v. Maryland* (*supra*). But the court was not there dealing with the validity of a criminal conviction based upon what a public officer found on a search of premises without a warrant. It was dealing, rather, with a conviction for refusal of the defendant to allow a health inspector of the City of Baltimore who had found rat dung piled high outside his premises to go inside to find the source of the rat infestation.

Mr. Justice FRANKFURTER writing for the court (p. 367) was careful to note that "Inspection without a warrant" as an adjunct to "a regulatory scheme for the general welfare" and "not as a means of enforcing the criminal law" has long historical antecedents.

In summarizing the judgment of the court it becomes clear (pp. 371-372) that the opinion is not dealing with a criminal conviction based on "search" or "inspection" without a warrant.

Although the building inspector case arising in Dayton (*Eaton v. Price, supra*), was, like *Frank*, based upon a conviction for refusing access of a building inspector to a dwelling, and not a conviction based on evidence found on a search without warrant, and followed in its effect the rule of *Frank*, the decision did not rest upon a clear majority of the Justices who, one Justice not participating, divided four to four, with a resulting affirmance of the Ohio court. Whether *Eaton* has had any effect on the strength of the *Frank* rule remains for future decision, but

Opinion per BERGAN, J.

neither decision sanctions the searches resulting in the criminal convictions now before us.

The People also argue that, in failing to comply with the procedural requirements of section 813-d of the Code of Criminal Procedure which took effect April 29, 1962 (L. 1962, ch. 954), defendant waived the objection to the unlawful search and, therefore, to the testimony of the village officials of their observations of the criminal acts charged and such testimony was properly received in evidence.

Section 813-d is literally addressed only to physical evidence. It does not, in terms, authorize the suppression of oral testimony to be given by a witness who has learned facts through an unlawful search. The section is part of title II-B of the code which deals generally with motions for the return of property or the suppression of evidence obtained as a result of unlawful search and seizure.

This title of the code expressly deals with "property, papers or things, hereinafter referred to as property" (§ 813-c). Section 813-d requires a motion for suppression with reasonable diligence before the trial, with carefully laid out exceptions, and provides that, if such a motion is not made, the defendant shall be "deemed to have waived any objection during trial to the admission of evidence based on the ground that such evidence was unlawfully obtained."

No point was made by the People before the Police Justice at the trial when objection on constitutional grounds was made to the testimony of observations by the public officials or before the County Court on appeal that the defendant had failed to comply with the procedure set up in title II-B, and the People must be deemed to have waived that objection. In any event the appellant ought not be found to have been precluded in his objection by not moving to suppress. The enactment of this procedure as part of the code followed the decision in *Mapp v. Ohio* (367 U. S. 643) and is clearly an attempt, in response to that decision, to clarify steps to be followed where unlawful search and seizure is claimed (Interim Report, Temporary Commission on Revision of Penal Law and Criminal Code [N. Y. Legis. Doc., 1962, No. 41], p. 19). The full sense of title II-B is to provide a means of suppressing as evidence or restoring to the owner tangible evidence unlawfully seized.

Concurring memorandum per DESMOND, Ch. J.; dissenting opinion per BEANE, J.

A statute such as this should not be applied literally to what a witness has observed, carries in his memory, and will some day in court articulate into a narrative in words. This is not "material" for suppression in the way physical things which are held as evidence may be treated. The normal way to protect a defendant's rights from the narrative of things learned by an unlawful search is not to take the testimony of the witness on objection when it is actually offered. (Cf. *People v. O'Neill*, 11 N. Y. 2d 148, 153-154.)

We reach the conclusion that the criminal convictions of appellant were the result of an unlawful search of his home and should not stand (*Mapp v. Ohio*, *supra*).

The judgment of the County Court affirming the convictions of defendant should be reversed and the informations dismissed.

Chief Judge DESMOND (concurring). I concur for reversal and dismissal but solely on the ground that the record contains no showing of probable cause or reasonable ground for a search to detect possible zoning law violations. Indeed, there was no cause or ground at all. The injunction granted in 1953 (see *Incorporated Vil. of Laurel Hollow v. Laverne Originals*, 307 N. Y. 784) against illegal use of the premises was not a justification in 1962 for entries and searches without a warrant, without consent and without necessity.

BEANE, J. (dissenting). The judgment of the County Court should be affirmed.

That a community is, of course, properly concerned lest conditions in buildings imperil the health and safety of the public is a proposition which was upheld in the cases of *Frank v. Maryland* (359 U. S. 369 [1959]) and *Eaton v. Price* (364 U. S. 263). It is not enough, as the rationale in *Frank v. Maryland* (*supra*) finds, to voice agreement with the desirability, if not necessity, of laws regulating the maintenance of illegal premises. Nor is this purpose effectuated by enactment of legislation. Provision must be made for enforcement of the laws by inspection, prosecution and imposition of penalties. The most effective tool of enforcement is by periodic inspection of the premises affected by the regulatory statutes to the end that the illegal conditions may be uncovered. The necessity for such inspections has been recognized from the very beginning of legislation in this field. (See MacNeil Mitchell, *Historical Development of the Multiple*

Dismissing opinion per BURNETT, J.

Dwelling Law, printed as a foreword to McKinney's Multiple Dwelling Law [McKinney's Cons. Laws of N. Y., Book 35-A, pp. IX-XXI].) In 1647 in New Amsterdam, surveyors were appointed to superintend construction of houses and fences, and given the power to inspect private premises. In 1648 inspectors were appointed to inspect chimneys in private dwellings. The Legislature as early as 1796 passed a law which gave the city officials the right to enter homes to take steps to correct unsanitary conditions. (See, also, Rev. Stat. of N. Y. [1823], part I, ch. XIV, entitled "Of the Public Health" [tit. III, art. I; vol. I, p. 410].) The reported cases dealing with the right of municipal authorities to inspect premises for possible violations of regulatory statutes have invariably affirmed such rights. (*Safec v. City of Buffalo*, 204 App. Div. 561; *Givner v. State*, 210 Md. 484; *Richards v. City of Columbia*, 227 S. C. 533; *Thurlow v. Crossman*, 336 Mass. 248; cf. *State v. Buxton*, 238 Ind. 93, 101, and cases cited in n. 5 thereof; *City of St. Louis v. Evans*, 337 S. W. 2d 948 [Mo.].) The penalties imposed for violations necessarily must be effective and therefore embrace both fines and imprisonment.

The case of *Thurlow v. Crossman* (*supra*) is of particular interest. The plaintiff there brought an action in trespass against a "supervisor or constable warden" who had driven a State-owned automobile upon the plaintiff's premises to investigate suspected illegal activities relating to the taking and delivery of shellfish. The defendant who was in uniform was on the plaintiff's property for about 15 minutes. The court there said (p. 259): "The defendant in his capacity as enforcement officer was authorized in the performance of his duties, to 'enter upon and pass through or over private property or lands whether or not covered by water.' . . . *Parker v. Barnard*, 135 Mass. 116, 117 '[R]ights of property are held subject to such reasonable control and regulation of the mode of keeping and use as the legislature under the police power vested in them by the Constitution of the Commonwealth may think necessary for the . . . security of the public health and welfare'". Indeed, in *People v. Fidler* (280 App. Div. 698), in construing section 1851 of the Penal Law, which declares a person who willfully resists, delays, or obstructs a public officer in discharging the duty of his office to be guilty of a misdemeanor,

Dissenting opinion per BURKE, J.

the court, per BERGAN, J., stated: "We must discriminate carefully to see the difference between a right to search the person or vehicle after a valid arrest *for a crime* based on probable cause resting on one theory of law justifying intrusion into privacy; and a right to inspect the safety of a vehicle resting on quite a different theory of law justifying the examination of private property on the use to which the property is put in its effect on the public safety." (Italics supplied.)

On the subject Mr. Justice FRANKFURTER in *Frank v. Maryland* (*supra*, pp. 371-372) stated that "the problems which gave rise to these ordinances have multiplied manifold, as have the difficulties of enforcement. The need to maintain basic, minimal standards of housing, to prevent the spread of disease and of that pervasive breakdown in the fiber of a people which is produced by slums and the absence of the barest essentials of civilized living, has mounted to a major concern of American government. The growth of cities, the crowding of populations, the increased awareness of the responsibility of the state for the living conditions of its citizens, all have combined to create problems of the enforcement of minimum standards of far greater magnitude than the writers of these ancient inspection laws ever dreamed". Hence the authoritative case law distinguishes between a peace officer and a building inspector where the right to search without a warrant has been conferred by statute or ordinance on the inspector.

In this case section 10.1 of the Building Zone Ordinance of the Village of Laurel Hollow provides: "It shall be the duty of the Building Inspector, and he hereby is given authority, to enforce the provisions of this ordinance. The Building Inspector in the discharge of his duties shall have authority to enter any building or premises at any reasonable hour."

As Mr. Justice FRANKFURTER said in *Frank v. Maryland* (*supra*, p. 372), "Time and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area-by-area search or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts. The need for preventive action is great, and city after city has seen this need and granted the

Dissenting opinion per BURKE, J.

power of inspection to its health officials \* \* \*. Certainly, the nature of our society has not vitiated the need for inspections first thought necessary 158 years ago, nor has experience revealed any abuse or inroad on freedom in meeting this need by means that history and dominant public opinion have sanctioned."

It is important to note there is no provision in our law which would authorize the issuance of a search warrant to a building inspector or health inspector. Section 791 of the Code of Criminal Procedure provides that "A search warrant is an order in writing in the name of the people signed by a judge, justice or magistrate of a court of criminal jurisdiction, directed to a *peace officer*, commanding him to search for personal property, and to bring it before the judge, justice or magistrate". (Italics supplied.)

Even though the sanctions for violations of zoning statutes and other regulatory laws resemble criminal sanctions, a violation of such laws does not constitute a crime. Such violations are analogous to offenses. They may not in any way or in any sense be referred to as part of a criminal record.

In *District of Columbia v. Little* (178 F. 2d 13 [C. A. D. C., 1949], *aff'd.* on other grounds 339 U. S. 1 [1950]) the rationale of the opinions did not foreclose a right of inspection of private dwellings. It seems to me that the "duties which the inspector was seeking to perform, under the authority of the [village], were of such a reasonable, general, routine, accepted and important character, in the protection of the public health and safety, that they were being performed lawfully without such search warrant as is required by the Fourth Amendment to protect the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures". (*District of Columbia v. Little*, 339 U. S. 1, 7-8, *supra*.)

The distinction made by the court between inspections resulting in administrative or civil action and those resulting in imprisonment is a most unhappy one. Who knows what penalties may be advisable in order to correct violations uncovered by periodic inspections of health and building officials? At the time of the inspection no one can know. In an analogous situation the United States Supreme Court has pointed out that searches

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are good or bad when they are made, on the basis of facts then existing. Their legality is not affected by subsequent occurrences. (*Byars v. United States*, 273 U. S. 28; *United States v. Di Re*, 332 U. S. 581.) Yet the court today suggests that an inspector's right to search for violations may depend on the consequences visited on those responsible for the violations sought to be uncovered by the inspection. I would have thought it obvious that we cannot lay down a rule regulating official conduct by reference to events not yet existing, or frequently even foreseeable, at the time of the search.

With the restriction imposed for the first time today, the enforcement of zoning laws and other regulatory statutes governing the use of property will be thwarted with a resultant increase in conditions which will breed not only slums in cities but will, as well, endanger the health, safety and welfare of all communities in this State.

Judges FULD and VAN VOORHIS concur with Judge BERGAN; Chief Judge DESMOND concurs in a separate memorandum; Judge BURKE dissents in an opinion in which Judges DYE and SCILEPPI concur.

Judgment reversed, etc.

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DEFENDANTS' EXHIBIT A

A-130

EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

MAR 4 - 1974

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INCORPORATED VILLA  
**LAUREL HOLLAND**

Syosset Post Office  
New York

**Building Zone Ordinance**  
**General Ordinances**



# INCORPORATED VILLAGE OF LAUREL HOLLOW

## VILLAGE ORDINANCES

After public hearing and at a meeting of the Board of Trustees of the Incorporated Village of Laurel Hollow on August 16, 1960, the Building Zone Ordinance, the General Ordinances and the Building Code of the Village were duly amended and the following ordinances were duly adopted, ordained and enacted by said Board and entered in its minutes and the same, as further amended on August 1, 1961, now read in full as follows:

### BUILDING ZONE ORDINANCE

Regulating and restricting the height, size and number of stories of buildings and other structures, the size of lots and of yards and other open spaces, the density of population and the location and use of buildings and land for residential or other purposes; and providing fines and penalties for violations of the provisions of this ordinance; so as to lessen congestion in the streets; to secure safety from fire, flood, panic and other dangers; to promote the good order, peace, health, safety, morals and general welfare of the community; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements needed in the Village; due consideration having been given to the character of the Village and its suitability for particular uses and with a view to conserving the value of buildings and land and encouraging the most appropriate use of land throughout the Village.

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known as Residence District, the boundaries of which shall be the boundaries of this Village as shown upon the map attached to and made a part of this ordinance, together with any land thereto annexed after the effective date of this ordinance, which map is entitled "Official Zoning District Map, Parts I and II, of the Incorporated Village of Laurel Hollow as amended February 2, 1959, in the Town of Oyster Bay, County of Nassau and State of New York," and all the notations, references and other things shown thereon shall be as much a part of this ordinance as if they were all fully described herein.

**Section 3.1.** After the effective date of this ordinance, no building or premises, or any part thereof, in the Village or in any territory hereafter annexed shall be used or maintained for any purpose other than the uses permitted therefor by this ordinance; no building or part of a building in the Village shall be erected, enlarged, altered or maintained except in conformity with the provisions of this ordinance, nor shall any building or part of a building in the Village be used or maintained if erected, enlarged or altered other than in conformity with the provisions of this ordinance.

#### **ARTICLE IV — AREA, FRONTAGE, HEIGHT SETBACK REQUIREMENTS**

##### **Section 4.0. Residence District.**

(a) Subject to the exceptions specified in Section 8.1 of this ordinance, no building shall hereafter be erected, altered or enlarged in the Residence District except on a lot which for each principal building, together with its accessory buildings:

(1) has an area of at least two acres; provided however, that the building area shall not exceed 15% of the lot area;

(2) has a front lot line frontage on a street of at least 150 feet; except that where said frontage coincides with the circumference of a turnaround at the extremity of a deadend street such front lot line frontage shall be at least 50 feet.

(b) Subject to the exceptions specified in Section 8.1 of this ordinance, no building shall hereafter be erected, altered or enlarged in Residence District unless:

(1) if it be a principal building, it be set back at least 60 feet from every street line and 40 feet from every boundary line of the lot.

(2) if it be an accessory building, it be set back at least 100 feet from every street line and 40 feet from every boundary line, except that a garage may be set back at the same distance as a principal building from the street but not less than 60 feet.

(3) it be a building not exceeding 45 feet in height; provided, however, that with respect to any building whose height exceeds 35 feet, the setbacks prescribed in Subdivision 4 (b) 1 and 2 above, shall be increased by one foot for every foot by which the height exceeds 35 feet.

#### **ARTICLE V — USES IN RESIDENCE DISTRICT**

**Section 5.0.** No building or premises shall be used or maintained for any purpose except the purposes enumerated below and for no other, and no building shall hereafter be erected, enlarged or altered if, as so erected as a result of such enlargement or alterations, such building or any part thereof is arranged, designed or intended to be used for any purpose except the purposes enumerated below.

Such uses shall not include any uses customarily carried on as a business, or any billboard or advertising sign except as hereinafter specifically permitted. This provision shall not be deemed to permit any driveway or walk giving access to premises used for business purposes or used for purposes not permitted in Residence District.

(a) Single Family Dwelling consisting of detached principal building.

(b) Accessory Buildings for private and non-commercial purposes subordinate and incidental to the single family dwelling.

(c) Uses or Buildings customarily incidental or accessory to the uses herein specifically permitted in said district and located on the same lot and under the same ownership, viz:

- (1) Farming (not including dairy farming),
- (2) Tree, flower, fruit or shrubbery open-air nursery,
- (3) Poultry,
- (4) Greenhouse horticulture, provided that any such greenhouse shall not have a building area, including adjoining structures, in excess of 1000 square feet and provided further that no fertilizer be stored within one hundred fifty (150) feet from any such boundary or street line unless kept in airtight storage,
- (5) Breeding of dogs, game, birds, bees and horses; provided, however, that with respect to the foregoing uses in subdivisions (1-5) inclusive of this subsection (c) there shall be no display of signs, advertising, produce, goods, stock or merchandise visible from any street, and provided further that all buildings or structures be set back at least 100 feet from each boundary line of the lot and at least 150 feet from the street line.
- (6) The carrying on of a home occupation solely by a person residing in the dwelling unit in which such home occupation is carried on provided that there is no display of signs, advertising, produce, goods, stock or merchandise visible from any street, that no assistant, whether paid or not, is employed and that no mechanical or electrical equipment is used except ordinary household equipment and provided that the space so used does not occupy more than one-quarter of the total floor area of the dwelling unit and provided, further, that such home occupation is not carried on in a cellar or basement.
- (7) Oystering and Clamming in the waters within the boundaries or within fifteen hundred feet from the shore of the Village.
- (8) Real Estate activities of an owner or of his duly authorized agent, in connection with his property within the Village.
- (9) The office or studio of a physician, painter, sculptor, surgeon, architect, dentist, musician, lawyer, real estate broker or engineer residing in the dwelling unit in which such office or studio is located, provided that there is no display or advertising on the premises in connection with such use except for a professional name plate not over one square foot in area; provided, further, that said name plate shall comply with the provisions of Article VII of this ordinance, and provided, also, that such studio or office does not occupy more space than one-third of the floor area of one floor of such dwelling and that such use is merely incidental to the use of such dwelling unit primarily for residential purposes; provided, further, that any such musician's studio is equipped and used in such manner that sounds therefrom are not audible to other persons on nearby premises; and provided, further, that no assistants, whether paid or not, may participate in such use, except that one assistant may be employed if the nature of the profession is such as to require an assistant; provided, further, that no use shall be made of more than one building in connection with such professional use; and provided, further, that such professional use shall not be deemed to include the right to engage in wholesale or retail trade.
- (d) Pumping, storage, sale and distribution of water, including water towers, upon and subject to such conditions as may be imposed by the Board of Trustees after written application thereto and issuance of a permit.
- (e) Private and non-commercial Docks and Boating, Sea Walls, Retaining Walls and Jetties.
- (f) Playgrounds and Parks, and Buildings incidental and accessory thereto, only when authorized as a variance by the Board of Zoning Appeals, subject to the conditions that they be a part of and incidental to a permitted educational institution and are not operated for profit and provided, further, that at least 51% in number of the governing board of any such organization shall be comprised of resident owners of property in the Village, and provided, further, that such a variance may be granted only subject to Sections 5.1, 5.2 and 5.3 of this ordinance.
- (g) Incorporated Churches, only when authorized as a variance by the Board of Zoning Appeals, provided, however, that the membership and governing board of such church be at least partially composed of Village residents and provided, further, that the buildings and property of such church shall be used only for purposes of worship and other customary church purposes, and provided, further, that such a variance may be granted only subject to Sections 5.1, 5.2 and 5.3 of this ordinance.

(n) Primary or Secondary Schools which serve the immediate or anticipated future needs of the inhabitants of Central School District No. 2 of the Towns of Huntington and Oyster Bay; only when authorized as a variance by the Board of Zoning Appeals and provided that such a variance may be granted only subject to Sections 5.1, 5.2 and 5.3 of this ordinance.

(i) Incorporated Social Club organized and operated only for social purposes and outdoor recreation, only when so authorized as a variance by the Board of Zoning Appeals; provided that any such club shall be organized and operated exclusively for nonprofit purposes, no part of the net earnings of which shall inure to the benefit of any private shareholder or member; and further provided that at all times at least a majority of its members entitled to vote and at least a majority of its Board of Directors shall be resident property owners in the Village; and further provided that the Board of Zoning Appeals shall have power to grant such variances for periods of unlimited duration or for periods of limited duration without prejudice to subsequent applications for renewal.

(j) Scientific Research Laboratory together with necessary residential and accessory buildings used exclusively by laboratory personnel; only when authorized as a variance by the Board of Zoning Appeals, provided that such laboratory qualifies as an organization (a) exempt from income taxes imposed by, and (b) contributions to which are deductible from income under the applicable provisions of, the Internal Revenue Code, and provided further that such variance may be granted only subject to Sections 5.1, 5.2 and 5.3 of this ordinance.

**Section 5.1** Such variances as are provided for in this ordinance may be granted only when the Board of Zoning Appeals finds affirmatively that such variance is consistent with the good order, peace, health, safety, morals and general welfare of the Village, and the Board of Zoning Appeals shall state in such variances such restrictions as may be deemed necessary or desirable to protect the same.

**Section 5.2** Such variances for tax exempt institutions as are provided in this ordinance shall not be granted, unless the grant of such variances shall incorporate a condition, if required by the Board of Trustees in its sole discretion, based upon a legally binding agreement between the institution and the Village that the Village shall receive annual payments of such sums of money as will in the opinion of the Board of Trustees fully compensate the Village for the rendition of municipal services.

**Section 5.3.** Such variance for tax exempt institutions as are subject to the provisions of this section may be granted only with respect to the quantity of acreage which is required exclusively for carrying out thereupon the purposes of such variance use, and may be granted only when the quantity of acreage already subject to use by said tax exempt institutions does not exceed five per centum of the total acreage included within the corporate limits of the Village. In determining the acreage requirement and the setbacks the following factors shall be taken into consideration:

- (1) The size and location of the building or buildings thereon.
- (2) The proposed number of occupants of the building or buildings thereon.
- (3) The use for which the building or buildings thereon are intended.

**Section 5.4.** Without regard to the generality of this section as limited by the particularization of the foregoing specified uses, no building or structure shall be erected or used for any purpose which is or may reasonably be expected to be obnoxious or offensive by reason of causing or emitting odor, smoke, vapor, gas, dust, garbage, refuse matter, noise or vibrations, or which is or may reasonably be expected to be dangerous or harmful to or inconsistent with the good order, peace, health, safety, morals or general welfare of the community or which tends to disturb or annoy residents of the Village, or which involves any explosion menace or any serious fire hazard.

## ARTICLE VI—BUILDINGS AND OTHER STRUCTURES

**Section 6.1.** Building Inspector, Permits, etc.

(a) Conformity. No building or structure shall hereafter be con-

plication therefor shall be filed with the Building Inspector by the owner or lessee of the building or premises on which such sign is to be erected or maintained or by the duly authorized agent of such owner or lessee. Such application shall be accompanied by the written consent of the owner or lessee of the property on which such sign is to be erected or maintained and shall contain an accurate description of the location or proposed location of such sign, the name and address of the applicant and the name and address of the person by whom such sign is to be erected, altered, maintained, reconstructed or relocated, and such other information as the Building Inspector may require to show a compliance with the provisions of this ordinance.

(b) A fee of two (\$2.00) Dollars shall be paid to the Village by the applicant for a permit at the time of submitting his application for a permit.

(c) A temporary permit may be issued by the Building Inspector upon application for a permit, which permit shall remain temporary until the erection, alteration, reconstruction or relocation of such sign is completed and the Building Inspector has endorsed his final approval on such permit. Upon completion of such sign the applicant shall so notify the Building Inspector who shall thereupon inspect such sign or cause an inspection to be made thereof prior to his endorsement of final approval.

**Section 7.3. Construction and Maintenance of Signs.** All signs shall be properly secured, supported and braced as to make them safe and shall be kept in good structural condition, clean and well painted.

**Section 7.4. Revocation and Expiration of Permit.**

(a) When it shall appear to the Building Inspector that any sign is being maintained in an unsafe or insecure manner or in violation of any of the terms of this Article, he shall notify the person to whom the final permit has been issued in writing at the address stated on the application, and it shall be the duty of such person to make such repairs or to comply with the necessary provisions of the ordinance within the time stated in the notice. If such repairs are not made or if such compliance is not so effected, the Building Inspector may cause such sign to be removed and shall charge the expense thereof to the person so notified.

(b) Any permit issued hereunder shall be deemed to expire upon any change in ownership of the premises on which it is erected or upon any change in ownership of the business or profession which it shall advertise. Upon expiration and notice thereof by the Building Inspector to the applicant it shall be the duty of the person so notified to remove such sign, and, if not so removed, the Building Inspector may cause such sign to be removed and shall charge the expense thereof to the person so notified.

**Section 7.5. Fences.** No fence, wall or structure in the nature of a fence shall be hereafter erected or maintained on any premises which shall exceed six and one-half (6½) feet in height, such height to be measured from the curb level or ground, whichever is higher, unless otherwise permitted as a variance by the Board of Zoning Appeals upon application and the issuance of a permit therefor pursuant to Section 5.1 of this ordinance. On any corner lot no wall, fence or other similar structure shall be erected and no hedge, tree, shrub or other growth shall be maintained in such location as in the opinion of the police department would cause danger to traffic by obstructing the view.

**Section 7.6. Trailers.** No automobile trailer designed to be used for human habitation shall be used, stored or parked in the Residence District, except that a trailer may be stored or parked inside a private garage.

## ARTICLE VIII—GENERAL PROVISIONS

**Section 8.0. Non-Conforming Buildings and Uses.** Any building or use existing on the effective date of this ordinance and permitted by the zoning ordinance in effect immediately prior to that date, although not conforming with the other provisions of this ordinance, may be continued subject to compliance with the provisions of Section 8.1 of this ordinance, and subject to the following conditions:

(a) No such building which is non-conforming with respect to height, area or lot location or setback from any lot line shall be enlarged or altered in such manner as to increase any non-conformity subject to the provisions of Section 8.1 of this ordinance.

Village Law of the State of New York as amended from time to time. The Board of Zoning Appeals shall have power from time to time to adopt, repeal and amend rules and regulations not inconsistent with law or the provisions of this ordinance governing its procedure and the transaction of its business.

**Section 9.2.** All applications (both original and appellate) to the Board of Zoning Appeals shall be made and submitted by the applicant under oath and in writing, in accordance with such rules as may be prescribed by such Board. A fee, of not less than Twenty-five (\$25.00) nor more than One Hundred (\$100.00) Dollars in an amount to be prescribed by the Chairman of the Board of Zoning Appeals, shall be paid to the Village by the applicant at the time of the submission of the application.

**Section 9.3. Appellate Jurisdiction.** The Board of Zoning Appeals shall, pursuant to the Village Law of the State of New York, as amended from time to time, hear and decide appeals from and review any order, requirement, decision or determination made by the Building Inspector, or other officer charged with the enforcement of this ordinance.

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of any provisions of this ordinance, the Board of Zoning Appeals shall have the power in a specific case to vary any such provision in harmony with its purpose and intent so that the spirit of the ordinance shall be observed, public good order, peace, health, safety, morals and general welfare secured, and substantial justice done.

**Section 9.4. Original Jurisdiction.** The Board of Zoning Appeals may, in a specific case after public notice and hearing and subject to appropriate safeguards to be prescribed by such Board, determine and vary the application of the provisions of this ordinance in harmony with their general purposes and intent as follows:

They may permit any variance specifically provided for in this ordinance subject to the provisions and conditions applicable thereto.

They may grant temporary and conditional permits for a period of two years or less for uses and buildings which, but for such permission, do not comply with the requirements of this ordinance.

They may exercise such other powers of original jurisdiction as are specifically provided for in other sections of this ordinance or are authorized under the Village Law of the State of New York, as amended from time to time.

#### ARTICLE X—INTERPRETATION AND ADMINISTRATION

**Section 10.0. Interpretation.** Wherever the provisions of this ordinance require a greater width or size of lots, yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation (including, but not limited to, the State Building Construction Code), the provisions of this ordinance shall govern. Wherever the provisions of any other statute or local ordinance or regulation (including, but not limited to, the State Building Construction Code) require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this ordinance, the provisions of such statute or local ordinance or regulation shall govern.

This ordinance shall be deemed to prescribe minimum requirements. Except for the amendments to the Zoning Ordinance, herein provided for, this ordinance shall not be deemed to amend, repeal or impair any requirement in any ordinance or law, or in any deed, restriction or covenant or in any other undertaking among private persons, but no provisions in any such ordinance, law, restriction, covenant or undertaking shall be deemed to justify non-compliance with any provision of this ordinance.

**Section 10.1. Enforcement.** It shall be the duty of the Building Inspector, and he hereby is given authority, to enforce the provisions of this ordinance. The Building Inspector in the discharge of his duties shall have authority to enter any building or premises at any reasonable hour.

#### Section 10.2. Violations, Penalties.

(a) Any owner, lessee, contractor, corporation, association, agent or other person who uses or maintains, or causes to be used or maintained, any building or premises or any part thereof in the Village for any purpose other than the uses permitted therefor in this ordinance or who erects, enlarges, alters or maintains, or causes to be erected, enlarged, altered or maintained, any building or any part thereof in the Village except in conformity with the provisions of this ordinance and with the provisions of the State Building Construction Code, or who uses or maintains, or causes to be used or maintained, any building or any part thereof in the Village which has been erected, enlarged or altered other than in conformity with the provisions of this ordinance and the State Building Construction Code, or who in any manner violates, or causes to be violated, any provision of this ordinance and the State Building Construction Code, shall thereby be guilty of disorderly conduct, and shall be deemed to be a disorderly person, and on conviction, shall be subject to a fine of not more than One Hundred (\$100) Dollars for each violation.

(b) If any said person fails to abate any such violation of this ordinance or the State Building Construction Code within five calendar days after written notice has been served personally upon said person, or within ten days after written notice has been sent to said person by registered mail at said person's home or business address, said person shall be subject to a civil penalty of One Hundred (\$100.00) Dollars for each and every day that said violation continues recoverable by suit brought by the Village.

(c) The imposition of the penalties herein prescribed shall not preclude the Village Attorney from instituting any appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or to restrain, correct or abate a violation, or to prevent an illegal act, conduct, business or use in or about any premises.

(d) No oversight or dereliction of duty on the part of the Building Inspector or his representative shall legalize the erecting, construction, alteration, removal, use or occupancy of a building or structure that does not conform to the provisions of this ordinance or the State Building Construction Code.

#### ARTICLE XI—AMENDMENTS

Section 11.0. The Board of Trustees may from time to time, either on its own motion or on petition, after public notice and hearing, amend, supplement, change, modify or repeal the regulations, restrictions, boundaries and the Building Zone Map herein established pursuant to the provisions of the Village Law of the State of New York, as amended from time to time.

#### ARTICLE XII—SEPARABILITY

Section 12.0. If any clause, sentence, section, paragraph or provision of this Ordinance shall be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not invalidate the remainder of this Ordinance, but shall be confined in its operation to the clause, sentence, section, paragraph or provision directly involved in the controversy in which such judgment shall have been rendered.

I, Janet C. Frey, Village Clerk of the Incorporated Village of Laurel Hollow, Nassau County, New York, DO HEREBY CERTIFY that the foregoing is a copy of the Building Zone Ordinance duly adopted at a meeting of the Board of Trustees of said Village, duly called and held at the residence of John F. MacKay, Trustee of said Village, on the 16th day of August, 1960; that I have compared the same with the original thereof as recorded in the minutes of said meeting, and that the same is a true copy and transcript of such original and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said Village this 16th day of August, 1960.

JANET C. FREY,  
Village Clerk

DEFENDANTS EXHIBIT B

DEFENDANT

At a Term of  
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EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

MAR 4 - 1974

P R E S E N T : .

HON. CHARLES C. LOCKWOOD,

Official Referee

----- x  
: INCORPORATED VILLAGE OF LAUREL HOLLOW, :  
:

Plaintiff, :

-against- :

LAVERNE ORIGINAL, INC., ESTELLE  
LAVERNE and FEMINE LAVERNE

JUDGMENT DECREERING  
PERMANENT  
INJUNCTION

This action having been referred to Honorable CHARLES C. LOCKWOOD, Official Referee of this court, to hear and determine the issues herein, pursuant to an Order dated and entered in the Office of the County Clerk of Nassau County on September 23, 1952, made by Honorable NICHOLAS M. PETTE, Justice of the Supreme Court, Nassau County, and this action having accordingly come on for trial before Honorable CHARLES C. LOCKWOOD at a Term of the Official Referee's Part of the Supreme Court in the Second Judicial Department of the State of New York, and the issues having been tried before the Court without a jury on December 8, 9 and 22, 1952, and January 20 and 21, 1953, and plaintiff appearing by WHITE & CASE by CHESTER BORDEAU, Esq., and ROBERT F. LITTLE, Esq., of counsel, and the defendants appearing by EDWIN R. LYNDE, Esq., EMANUEL WEXLER, Esq., and ERIC C. GORDON, Esq., and the Court having heard the allegations and proofs of the parties, and due deliberation having been had thereon, and the Referee having made and filed his decision, dated May 6, 1953, it is

defendant, Estelle Laverne, dated March 31, 1949, and recorded in the Clerk's Office, Nassau County on May 4, 1949 in Liber 3826 of Deeds, page 347, are located in the residential zone the Incorporated Village of Laurel Hollow pursuant to plaintiff's zoning ordinance which became effective February 12, 1943, and that the use of said premises is subject to the provisions thereof and must conform thereto; and it is further

2. ORDERED, ADJUDGED AND DECREED that the defendants, LAVERNE ORIGINALS, INC., ESTELLE LAVERNE and ERWINE LAVERNE, are hereby permanently restrained and enjoined from using the premises in violation of said zoning ordinance; and it is further

3. ORDERED, ADJUDGED AND DECREED that the said individual defendants, ESTELLE LAVERNE and ERWINE LAVERNE, or either of them as professional persons, were and are entitled to make a partial use of the premises for their activities as such professional persons; and it is further

4. ORDERED, ADJUDGED and DECREED that the individual defendants may make said use of the premises, but such professional use of the premises by the defendants shall be conducted so as not to deteriorate or extend into a business or industry; and it is further

5. ORDERED, ADJUDGED AND DECREED that no party is entitled to costs of this action; and it is further

6. ORDERED, ADJUDGED AND DECREED that this judgment shall become effective sixty (60) days after a copy thereof, with notice of entry, is duly served upon the defendants; and it is further

7. ORDERED, ADJUDGED AND DECREED that any party to this action may hereafter apply at the foot of this judgment for such other, further and different relief as may be just and proper.

ENTER,

/s/ Charles G. Lockwood  
Charles G. Lockwood, Official Referee

Plaintiff's Address:

Laurel Hollow,  
Nassau County,  
New York.

Defendants' Addresses:

LAVERNE ORIGINALS, INC.  
160 East 57th Street  
New York County  
New York

ESTELLE LAVERNE & ERWINE LAVERNE  
Laurel Hollow Road  
Incorporated Village of Laurel Hollow  
Nassau County, New York

Granted  
Aug 5, 1953

Ernest F. Francke  
Clerk

Entered Aug 7, 1953  
Ernest F. Francke  
County Clerk of  
Nassau County

Sim:

PLEASE TAKE  
decree

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Attorneys f

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in the office of the Clerk of the  
County of

th day of August,

HITE & CASE

or Plaintiff

14 Wall Street,  
Borough of Manhattan,  
New York City.

R. Lynde, Esq.,

for Defendants,  
Greene Avenue,  
yville, New York

SUPREME COURT  
NASSAU COUNTY

INCORPORATED VILLAGE OF  
LAUREL HOLLOW,

Plaintiff,

v.

LAVERNE ORIGINALS, INC.,  
ESTELLE LAVERNE and  
ERWINE LAVERNE,

Defendants.

COPY

JUDGMENT DECREETING  
PERMANENT INJUNCTION

*with N. H. Lynde*

WHITE & CASE

ATTORNEYS FOR Plaintiff

14 Wall Street  
Borough of Manhattan  
New York City

TO

ATTORNEY FOR

At a Term of the Supreme Court  
of the Appellate Division/  
of the State of New York held in  
and for the Second Judicial Depart-  
ment at the Borough of Brooklyn, on  
the 1st day of March, 1954.

Present - Hon. FRANK F. ADEL, Acting Presiding Justice.

"	JOHN MACCRATE,	}	Justices
"	FREDERICK G. SCHMIDT,		
"	GEORGE J. BELDOCK,		
"	CHARLES E. MURPHY,		

----- x

Incorporated Village of Laurel Hollow,	:	
Respondent-Appellant,	:	Order of modification
	:	on appeals from judg-
vs.	:	ment, and dismissing
	:	appeal from order.

Laverne Originals, Inc., Estelle Laverne	:	
and Erwine Laverne,	:	
Appellants-Respondents.	:	

----- x

The above named Laverne Originals, Inc., Estelle Laverne and Erwine Laverne, the defendants in this action having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court, made by Official Referee Charles C. Lockwood, and entered in the office of the Clerk of the County of Nassau on the 7th day of August, 1953, except so much thereof as (1) adjudges that the individual defendants, Estelle Laverne and Erwine Laverne, as professional persons, were and are entitled to make a partial use of the premises for their activities as such professional persons, (2) approves the use being made by them as such professional persons, and (3) adjudges that the plaintiff is not entitled to costs, and the above named Incorporated Village of Laurel Hollow, the plaintiff in this action having also appealed from said judgment, insofar as same adjudges and decrees that defendants Estelle Laverne and Erwine Laverne are professional persons and entitled to make a partial use of the premises which are the subject of this action, for their activities as such pro-

1. Using or storing, in connection with any business, wallpaper, fabrics, furniture, statuary, ceramics, paints, inks, lacquers, thinners, coloring materials, screens for screen printing, vats or other products or materials; etc., and the said plaintiff having also appealed from an order of said Court, made by said Official Referee, and entered in said Clerk's office on the 26th day of October, 1953, denying plaintiff's motion to amend the judgment herein, and the said appeals having been argued by Mr. Emanuel Wexler of Counsel for appellants-respondents, and argued by Mr. Chester Bordeau of Counsel for respondent-appellant, and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, heretofore filed:

It is Ordered and Adjudged that the judgment so appealed from be and the same hereby is modified on the law by adding after the second decretal paragraph:

"2a. ORDERED, ADJUDGED AND DECREED that the defendants and each of them, their agents and employees be, and they hereby are, enjoined and restrained from performing or suffering to be performed on the above described premises any of the following acts as a business or in connection with the business of the corporate defendant or any other corporation or firm or individual:

"Storing wallpaper, fabrics, furniture, statuary, ceramics, paints, inks, lacquers, thinners, coloring materials, screens for screen printing, vats or other products or materials;

Manufacturing or processing wallpaper, fabrics, furniture, statuary, ceramics or other products or materials;

Maintaining, operating and using welding equipment, power equipment, machinery, tools, equipment and appliances;

Screen-printing of wallpaper or fabrics;

Processing or production of Marbalia or  
Marbleized wallpaper;

Using the aforesaid described premises as  
a workshop where any employees of said de-  
fendants do designing or other work on furni-  
ture, fabrics, wallpaper, statuary or ceramics  
or other products;

Maintaining or using the aforesaid described  
premises in part or in whole as a factory;  
and it is further"

and as so modified, the judgment so appealed from is affirmed,  
without costs, and it is

Further Ordered that the informal findings of fact  
contained in the decision of the Official Referee, are hereby  
affirmed, and it is

Further Ordered that in view of the modification  
of the judgment, the appeal from order is hereby dismissed,  
without costs.

Adel, Acting P.J., MacGrate, Schmidt and Murphy, JJ.,  
concur; Beldock, J., dissents and votes to affirm the judgment  
and order appealed from, with memorandum as contained in opin-  
ion and decision slip dated March 1st, 1954, herein.

Enter:

John J. Callahan

Clerk.

COUNTY OF NASSAU

----- x  
INCORPORATED VILLAGE OF LAUREL HOLLOW, :

Plaintiff, :

-against- :

LAVERNE ORIGINALS, INC., ESTELLE :

LAVERNE and ERWINE LAVERNE, :

Defendants. :

JUDGMENT OF  
MODIFICATION

----- x

Defendants Laverne Originals, Inc., Estelle Laverne and Erwine Laverne, having appealed to the Appellate Division of the Supreme Court for the Second Judicial Department from a judgment of the Supreme Court made by Official Referee Charles C. Lockwood and entered in the office of the Clerk of the County of Nassau on August 7, 1953, except so much thereof as (1) adjudges that the individual defendants, Estelle Laverne and Erwine Laverne, as professional persons, were and are entitled to make a partial use of the premises for their activities as such professional persons, (2) approves the use being made by them as such professional persons, and (3) adjudges that the plaintiff is not entitled to costs, and the plaintiff NAMED Incorporated Village of Laurel Hollow having also appealed from said judgment, insofar as it adjudged and decreed that defendants Estelle Laverne and Erwine Laverne are professional persons and entitled to make a partial use of the premises which are the subject of this action, for their activities as such professional persons, and insofar as said judgment fails and omits to enjoin the defendants,

their successors and assigns and their agents and employees and successors and assigns from: 1. Using or storing, in connection with any business, wallpaper, fabrics, furniture, statuary, ceramics, paints, inks, lacquers, thinners, coloring materials, screens for screen printing, vats or other products or materials; etc., and the said plaintiff having also appealed from an order of said Court, made by said Official Referee, and entered in said Clerk's office on the 26th day of October, 1953, denying plaintiff's motion to amend the judgment herein, and the said appeals having been argued by Mr. Emanuel Wexler of Counsel for appellants-respondents, and argued by Mr. Chester Borden of Counsel for respondent-appellant, and a certified copy of the order of the said Appellate Division dated March 1, 1954, having been duly filed, together with the record of said appeal, in the office of the Clerk for the County of Nassau; it is

ORDERED, ADJUDGED AND DECREED that the said judgment so appealed from be and the same hereby is modified on the law by adding after the second decretal paragraph the following:

"2a. ORDERED, ADJUDGED AND DECREED that the defendants and each of them, their agents and employees be, and they hereby are, enjoined and restrained from performing or suffering to be performed on the above described premises any of the following acts as a business or in connection with the business of the corporate defendant or any other corporation or firm or individual:

"Storing wallpaper, fabrics, furniture, statuary, ceramics, paints, inks, lacquers, thinners, coloring materials, screens for screen printing, vats or other products or materials;

Manufacturing or processing wallpaper, fabrics, furniture, statuary, ceramics or other products or materials;

Maintaining, operating and using welding equipment, power equipment, machinery, tools, equipment and appliances;

Screen-printing of wallpaper or fabrics;

Processing or production of Marbalia or marble-ized wallpaper;

Using the aforesaid described premises as a workshop where any employees of said defendants do designing or other work on furniture, fabrics, wallpaper, statuary or ceramics or other products;

Maintaining or using the aforesaid described premises in part or in whole as a factory; and it is further"

and as so modified, the judgment so appealed from is affirmed, without costs, and it is

FURTHER ORDERED that the informal findings of fact contained in the decision of the Official Referee, are hereby affirmed, and it is

FURTHER ORDERED that in view of the modification of the judgment, the appeal from order is hereby dismissed, without costs.

Judgment signed this 5<sup>th</sup> day of March, 1954.

ERNEST F. FRANCKE

Clerk

1954 Jul 28A.  
Nassau Co. Sup. Ct.  
County Clerk's Dy

At a Special Term, Part <sup>One</sup> of the  
Supreme Court of the State of  
New York, held in and for the  
County of Nassau, at the  
County Court House, Old Country  
Road, Mineola, New York, on  
the 28 day of July, 1954.

PRESENT:  
HON. PHILIP HUNTINGTON  
Justice.

----- -x  
:  
INCORPORATED VILLAGE OF LAUREL HOLLOW,  
:  
Plaintiff, :  
:  
-against- : ORDER ON REMITTITUR  
:  
LAVERNE ORIGINALS, INC., ESTELLE : INDEX NO.2569-1950  
LAVERNE and ERWINE LAVERNE, :  
:  
Defendants. :  
----- -x

The above-named defendants having appealed to  
the Court of Appeals of the State of New York from the judg-  
ment of this Court entered on March 5, 1954, upon the order  
of the Appellate Division of the Supreme Court, Second  
Judicial Department, modifying and as so modified affirming  
the judgment entered herein on August 7, 1953, and from  
each and every part of said judgment of the said Appellate  
Division of the Supreme Court and from the whole thereof,  
except so much thereof as (1) adjudges that the individual  
defendants, Estelle Laverne and Erwine Laverne, as pro-  
fessional persons, were and are entitled to make a partial  
use of the premises for their activities as such pro-  
fessional persons, (2) approves the use being made by them  
as such professional persons, and (3) adjudges that the  
plaintiff is not entitled to costs, and the Court of

A-150

Appeals, after due deliberation, having ordered and adjudged that the judgment so appealed from be affirmed and judgment entered for the plaintiff without costs and having further ordered and adjudged that the proceedings herein be remitted to this Court to be proceeded upon according to law,

NOW, on reading and filing the remittitur of the Court of Appeals, and upon motion of White & Case, attorneys for the plaintiff herein, it is

ORDERED that the order and judgment of the said Court of Appeals be and the same hereby are made the order and judgment of this Court.

E n t e r ,

PHILIP HUNTINGTON

*Philip Huntington*  
J. S. C.



ENTERED

JUL 28 1954

ERNEST F. FRANCKE  
County Clerk of Nassau County

SUPREME COURT : NASSAU COUNTY

----- x  
:  
INCORPORATED VILLAGE OF LAUREL HOLLOW,

Plaintiff,

-against-

LAVERNE ORIGINALS, INC., ESTELLE  
LAVERNE and ERWINE LAVERNE,

Defendants.

:  
:  
:  
: JUDGMENT

: INDEX NO.2569-1950  
:  
:

----- x

The above-named defendants having appealed to the Court of Appeals of the State of New York from the judgment of this Court entered on March 5, 1954, upon the order of the Appellate Division of the Supreme Court, Second Judicial Department, modifying and as so modified affirming the judgment entered herein on August 7, 1953, and from each and every part of said judgment of the said Appellate Division of the Supreme Court and from the whole thereof, except so much thereof as (1) adjudges that the individual defendants, Estelle Laverne and Erwine Laverne, as professional persons, were and are entitled to make a partial use of the premises for their activities as such professional persons, (2) approves the use being made by them as such professional persons, and (3) adjudges that the plaintiff is not entitled to costs, and the Court of Appeals, after due deliberation, having ordered and adjudged that the judgment so appealed from be affirmed and judgment entered for the plaintiff without costs and having further ordered and adjudged that the proceedings herein be remitted to this Court to be proceeded upon according to law, and the remittitur of the

A-152

having been entered herein, making the order and judgment of the Court of Appeals the order and judgment of this Court,

NOW, on motion of White & Case, attorneys for the plaintiff herein, it is

ORDERED, ADJUDGED and DECREED that the order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this Court, and it is

ORDERED, ADJUDGED and DECREED that the said judgment entered herein on March 5, 1954, upon the order of the Appellate Division, Second Judicial Department, modifying and as so modified affirming the judgment entered herein on August 7, 1953, be and the same hereby is ~~in all things~~ affirmed without costs.

*dated*  
JUDGMENT<sup>^</sup> this 29<sup>th</sup> day of July, 1954.

ERNEST F. FRANCKE  
Clerk

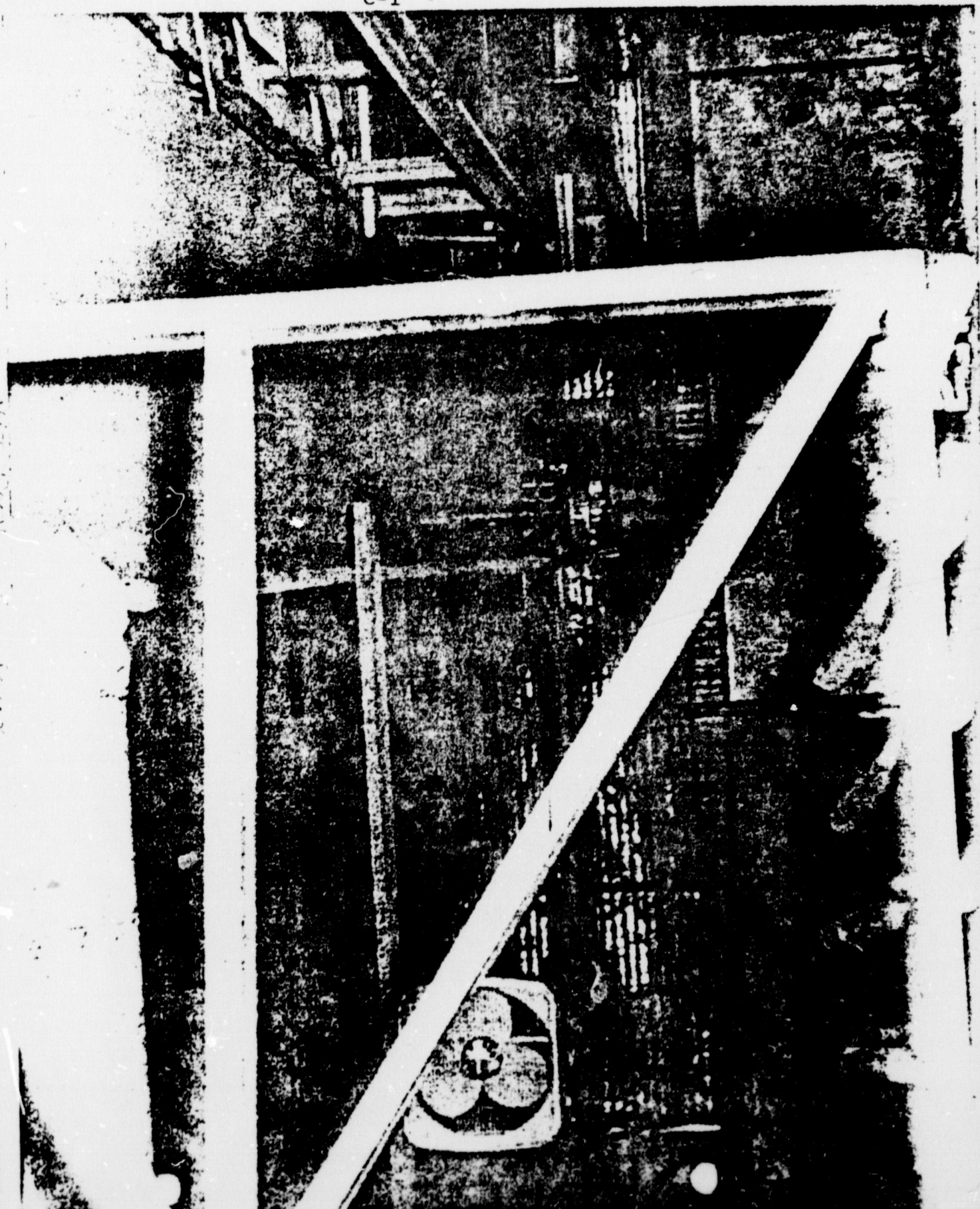
Plaintiff's Address:  
Laurel Hollow,  
Nassau County,  
New York

Defendants' Addresses:  
Laverne Originals, Inc.  
160 East 57th Street  
New York County, New York

Estelle Laverne & Erwine Laverne,  
Laurel Hollow Road,  
Incorporated Village of Laurel Hollow,  
Nassau County, New York.

DEFENDANTS EXHIBITS C-1,C-2,C-3,+E

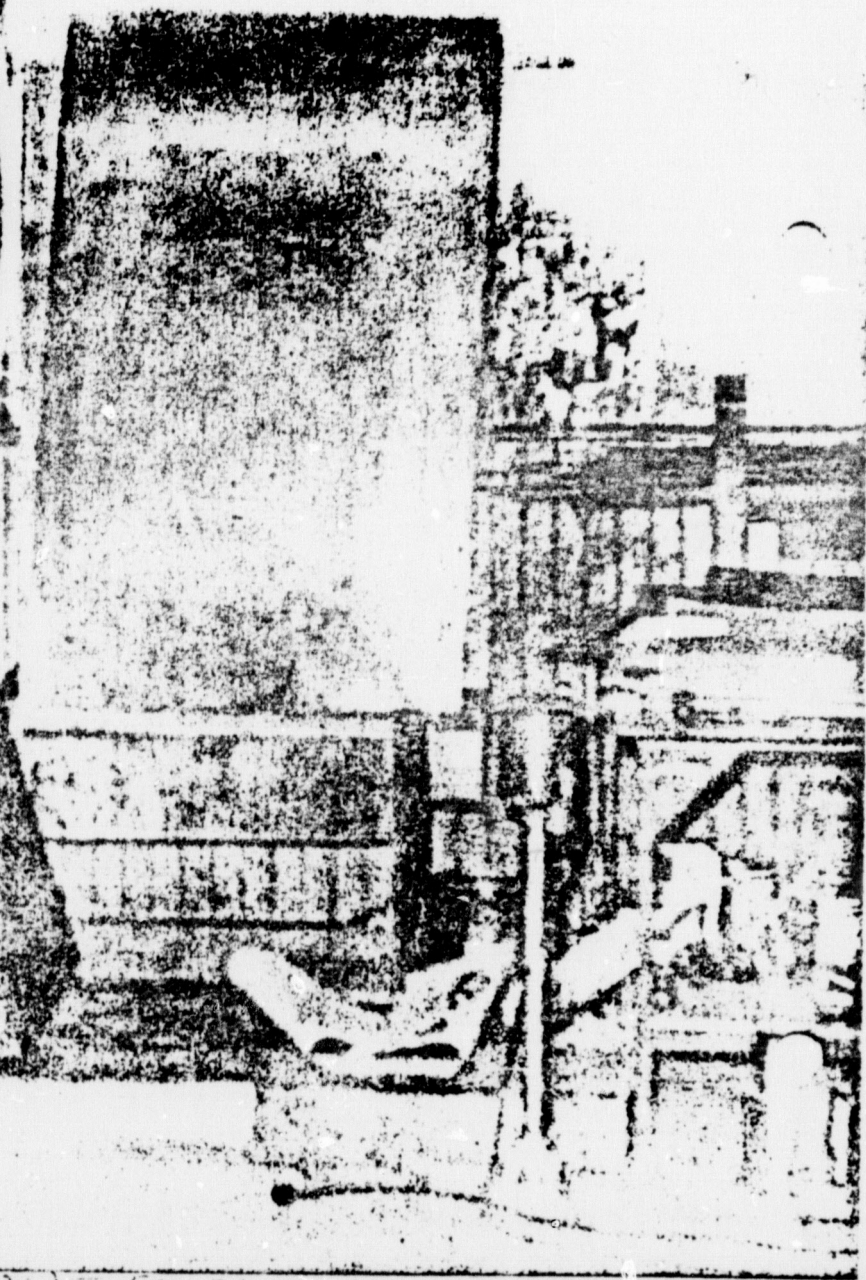
C-1



C-2



RIGHT HAND SIDE

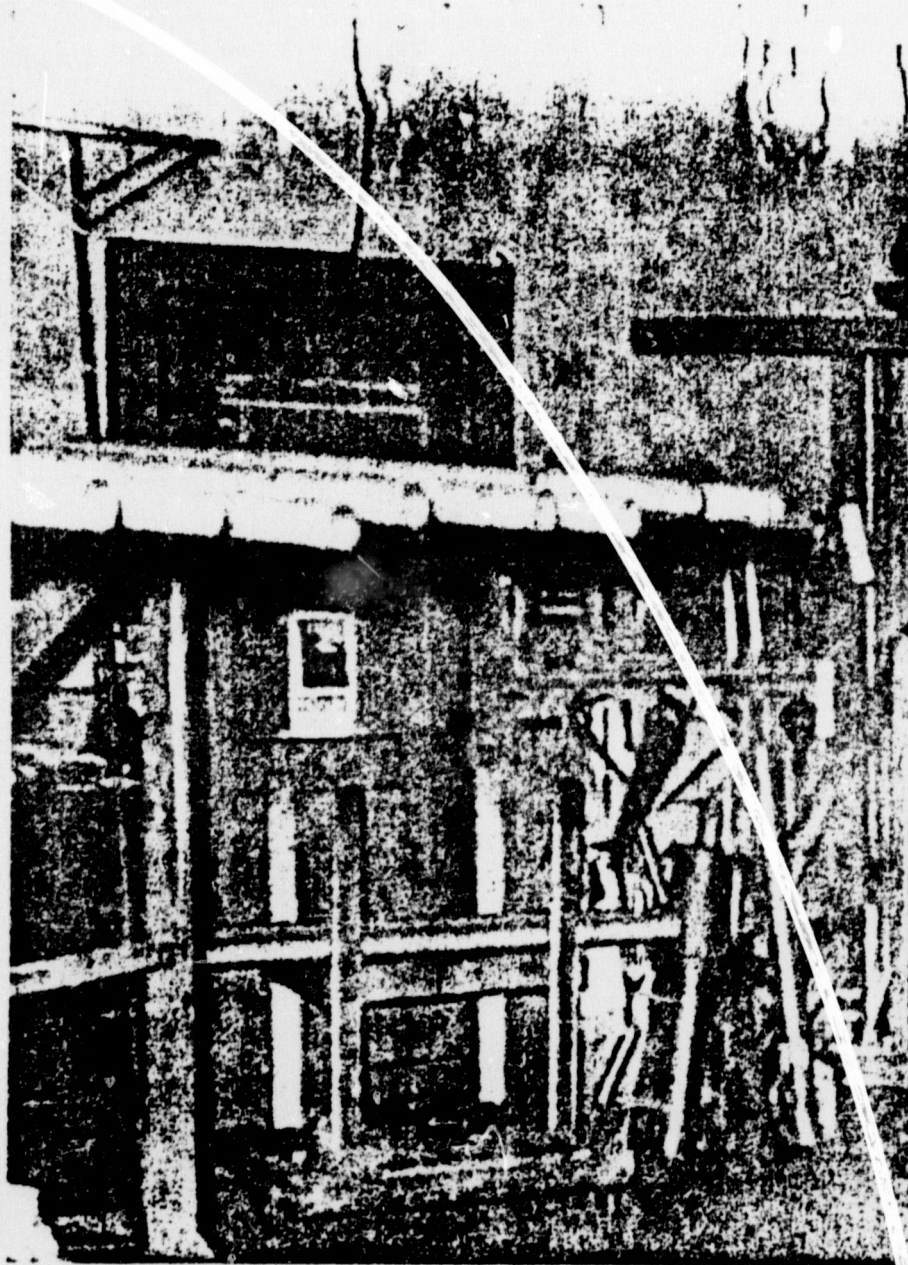


A-156

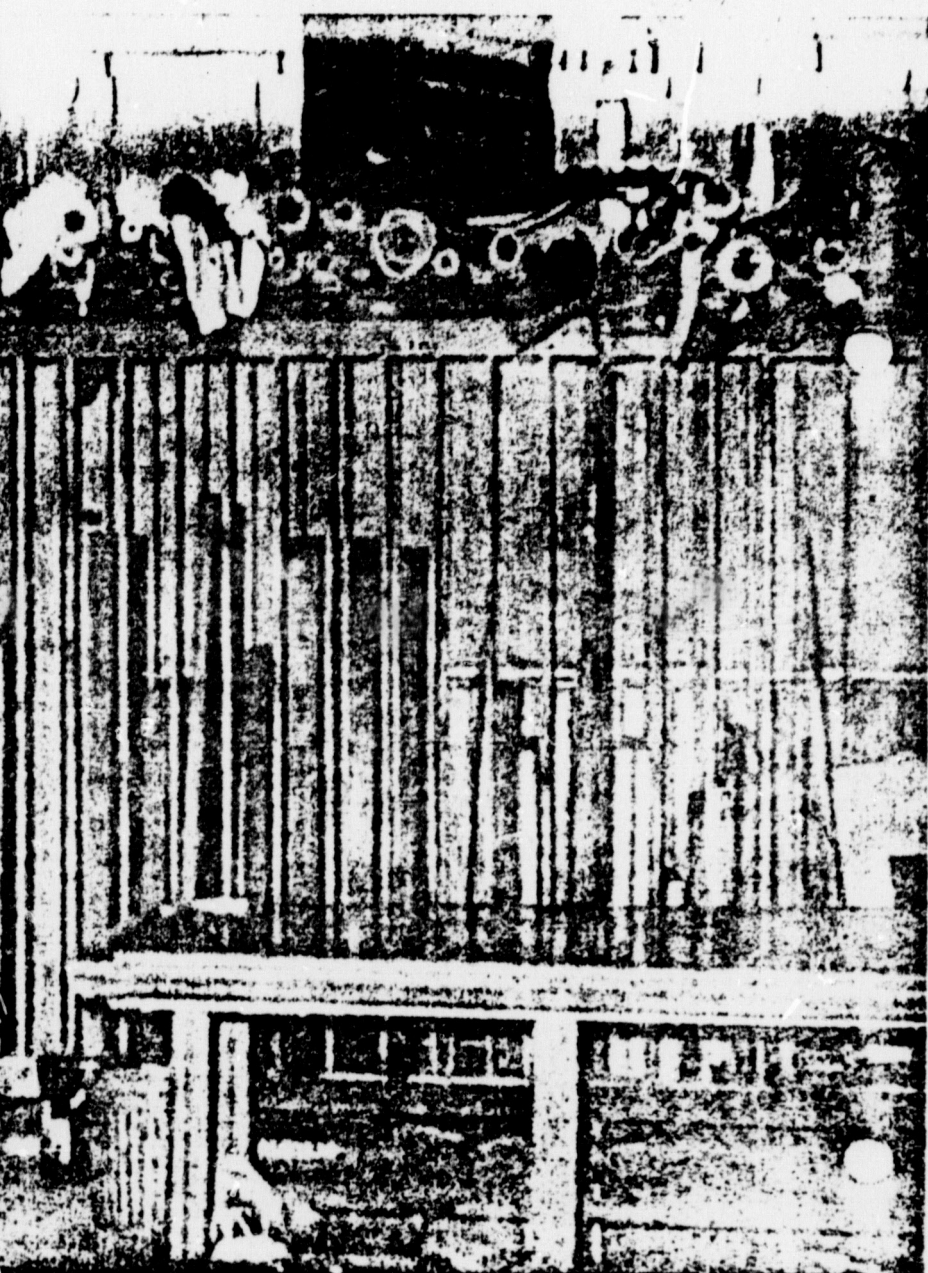
VLT ROOM

Photograph of the building

C-3



Longwood School

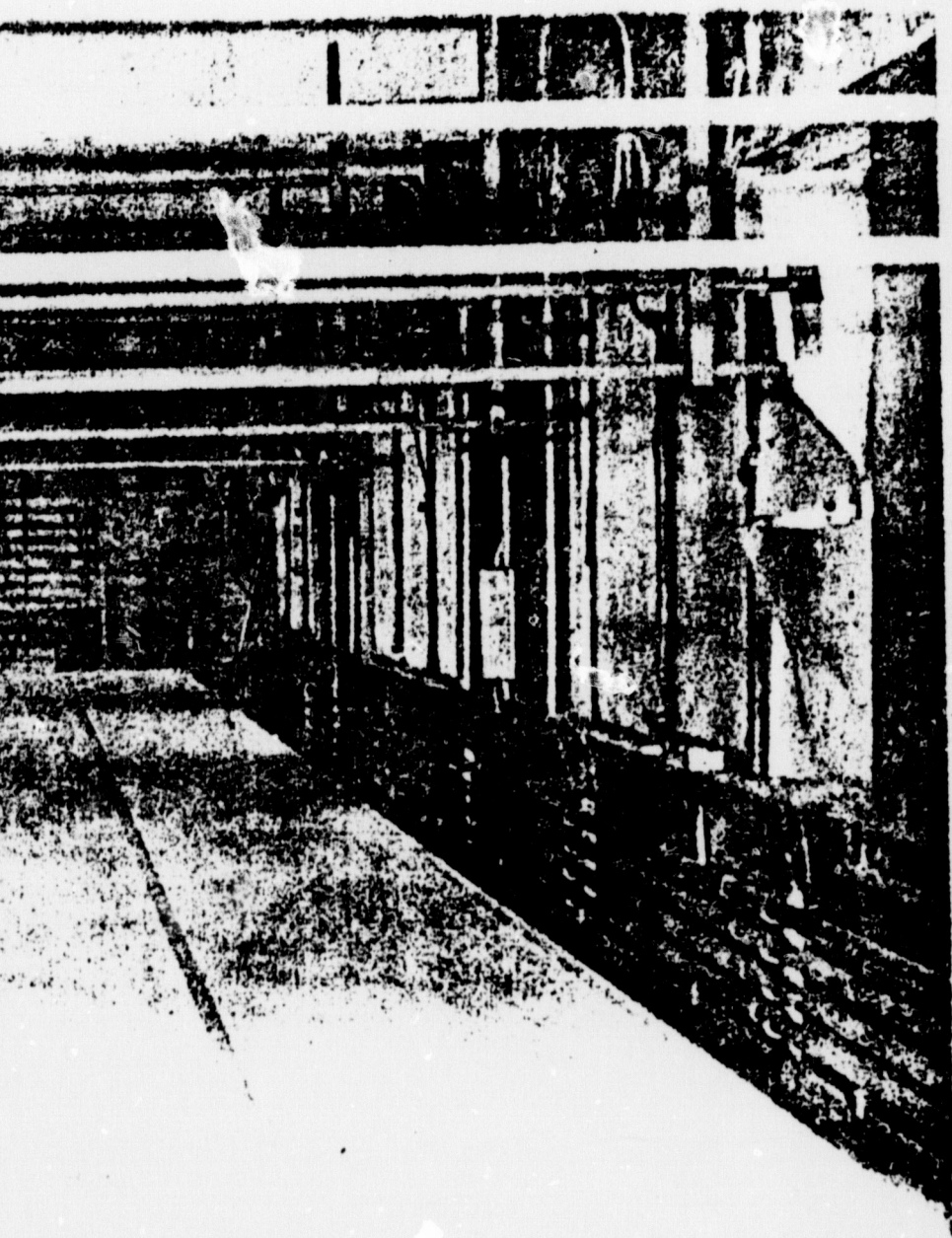


A-157

Van Rensselaer



UTTING TABLE



A-158

**DEFENDANTS EXHIBIT D**

DEFENDANT

4-86-24

EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

MAR 4 - 1974

INCORPORATED VILLAGE OF LAUREL HOLLOW  
NASSAU COUNTY, NEW YORK  
BUILDING DEPARTMENT

24 July 1962

and trustees:

Property, Violation found during inspection of,

This morning I was passing the Laverne property and took the opportunity of entering it for an inspection since it had been indicated to me by Mr. John Martin that a number of men seemed to be working in a commercial enterprise there daily.

Walking thru the building confirms this complaint. It is a bonafide small production setup, including vats, rolls of paper, coloring matter, large quantities of combustible solvents in several locations, and assorted miscellaneous equipment. Three men are apparently employed there. The leader, Rudy, and one of the others did state that they were employed by Mr. Laverne and they all agreed that they did the art work as well as the emergency flood damage control that they are actually working on while I was there. I was accompanied by Mr. Charles Cantor, P.E., who witnessed all the above.

This case as to me to be a violation of our Zoning Ordinance. However, I believe that Mr. Laverne had previous contact with the Board on the subject and they have been given a warning. I don't want to stir up anything. The operation is quiet, completely internal, and on previous attempted inspections, I have seen no signs of life. Will you advise me as to your plans for further proceedings in this matter.

Very Respectfully,  
[Signature]

[Signature]

44-36-24

INCORPORATED VILLAGE OF LAUREL HOLLOW  
NASSAU COUNTY, NEW YORK  
BUILDING DEPARTMENT

24 July 1962

To the Mayor and trustees:

Subject: Laverne Property , Violation found during inspection of,

This morning I was passing the Laverne property and took the opportunity of entering it for an inspection since it had been indicated to me by Mr. John Martin that a number of men seemed to be working in a commercial enterprise there daily.

Walking thru the building confirms this complaint. It is a barefide small production setup, including vats, rolls of paper, coloring matter, large quantities of combustible solvents in several locations, and assorted miscellaneous equipment. Three men are apparently employed there. The leader, Rudy, and one of the others did state that they were employed by Mr. Laverne and they all agreed that they did the art work as well as the emergency flood damage control that they are actually working on while I was there. I was accompanied by Mr. Charles Centor, P.E., who witnessed all the above.

This appears to me to be a serious violation of our Zoning Ordinance. I believe I have never had previous contact with Laverne on the subject and they have been given a warning. I don't want to stir up anything. The operation is quiet, completely internal, and on previously attempted inspections, I have seen no signs of life. Will you advise me as to your wishes for further procedure in this matter.

Tom B. [Signature]  
Deputy Mayor

[Signature]

**DEFENDANTS EXHIBIT F**

**A-162**

EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

MAR 4 - 1974

4573

A regular meeting of the Board of Trustees of the Incorporated Village of Laurel Hollow, Nassau County, New York, was held at the residence of Mayor Howard Corning, Jr., in said Village on September 24, 1962 at 8:30 P.M.

Present: Howard Corning, Jr., Mayor  
Hutchinson DuBosque  
John F. MacKay  
Douglas Despard  
Margaret Nittoli, Village Clerk  
Thomas C. Platt, Village Attorney

Absent: Orin T. Leach

The reading of the minutes of the annual organization meeting held on July 5, 1962 was waived, copies thereof having been circulated among members of the Board. The minutes of such meeting were, upon motion duly made and seconded, approved.

A general discussion was had with respect to the Police Department and the Board authorized and requested Trustee DuBosque (i) to study and report on the possibility of a joint communications system with the Villages of Cove Neck, Oyster Bay Cove and Lloyd Harbor and (ii) to study and report on a possible joint police force with the Villages of Cove Neck and Oyster Bay Cove.

The Village Attorney distributed copies of the Appellate Division's decision in the Village of Laurel Hollow v. Laverne Originals, Inc. case and reported on an inspection made by the Building Inspector during the summer. A general discussion was had with respect to this problem and the Building Inspector and Trustee DuBosque were authorized and instructed to make another inspection of the premises.

The Village Attorney was instructed to prepare a "look alike" ordinance and at the same time to revise the speeding ordinance so as to lower the speed limit on Moore's Hill Road to 25 miles per hour and to amend the anti-dumping ordinance.

The Mayor called the Board's attention to the fact that former Building Inspector William Hornblower had died since the last meeting of the Board, whereupon on motion duly made and seconded it was unanimously

RESOLVED that the Board of Trustees of the Incorporated Village of Laurel Hollow does hereby express its sincere regret and sorrow with respect to the death of William Hornblower, former Building Inspector of the Village. The Board and all residents of the Village are sincerely grateful for and appreciative of the services performed by former Building Inspector Hornblower during the many years in which he served in that capacity.

The next regular meeting of the Board was scheduled for October 22, 1962.

Payment of 88 bills in the sum of \$53,892.34 was approved.

There being no further business to come before the meeting, it was upon motion, duly made and seconded, adjourned.

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Margaret Nittoli  
Village Clerk

DEFENDANTS EXHIBIT G

A-166

EXHIBIT

U. S. DIST. COURT  
S. D. OF N. Y.

MAR 4 - 1974

A regular meeting of the Board of Trustees of the Incorporated Village of Laurel Hollow, Nassau County, New York, was held at the residence of Mayor Howard Corning, Jr., in said Village on October 22, 1962 at 8:30 P.M.

Present: Howard Corning, Jr., Mayor

Hutchinson DuBosque

John F. MacKay

Orin T. Leach

Douglas Despard

Margaret Nittoli, Village Clerk

Thomas C. Platt, Jr., Village Attorney

Also Present: Police Justice James Eisenman, at the invitation of the Board

The reading of the minutes of the regular meeting held on September 24, 1962 was waived, copies thereof having been circulated among members of the Board. The minutes of such meeting were, upon motion duly made and seconded, approved.

Mayor Corning made a report to the Board on the inspection made by Building Inspector Johnson, Trustee DuBosque and himself of the property owned by Laverne Originals, Inc. on October 18, 1962. Mr. Platt reported that Mr. Holzer, attorney for Mr. Laverne, had informed him that Mr. Laverne would not halt the operations being carried on at such premises.

Mr. Platts was requested to seek an order punishing the defendants in the Layman case for contempt.

Mayor Cerning read a letter dated October 16, 1962 from Ernest H. Stark and a general discussion was had with respect thereto. It was the consensus of the Board that the Mayor should refer Mr. Stark to the Board of Zoning Appeals.

Judge Eisenman made a report on vandalism which he said has been increasing in the Village in the past several months and a general discussion was had with respect thereto. It was the consensus of the Board that the Village Agency should stay in communication with the District Attorney's office of Suffolk County and report to the District Attorney of that County as well as any other responsible enforcing agency any violations that occur.

Judge Eisenman asked the Board to pass a resolution establishing a separate bank account with The Meadow Brook National Bank of Oyster Bay, New York for the deposit of fines levied by the Police Justice Court; whereupon, upon motion duly made and seconded, it was unanimously

Resolved that The Meadow Brook National Bank of Oyster Bay, New York be and it hereby is authorized to act as depository for fines and other monies levied by the Justice Court and that the right of said bank deposited in such Court's account is hereby made subject to withdrawal upon check duly signed on behalf of such Court.

by the Police Justice or the Village Treasurer,  
and it was further

RESOLVED that a certified copy of the foregoing  
resolution be filed with said Bank.

Trustee MacKay requested that Frederick Dychman's  
wages be raised from \$2.50 per hour to \$3.00 per hour and it  
was the consensus of the Board (Trustee DuBosque dissenting)  
that such raise should be approved subject to the approval of  
the Civil Service Commission.

Trustee DuBosque reported on the activities of the  
Marine Division during the summer of 1962 stating that the  
marine patrols had been increased by 70% over the previous  
year.

The Village Clerk requested a resolution transferring  
\$200 from the Contingent Fund to the Police Justice salary  
account in the current budget to cover payments owing to Police  
Justice Eisenman; whereupon, upon motion duly made and  
seconded, it was unanimously

RESOLVED, that A-10 Police Justice Salary be and  
the same hereby is increased from \$30.00 to \$230.00

and it was further

RESOLVED that A290-650 Contingent Fund be decreased  
from \$2,000 to \$1,800.

The next regular meeting of the Board was scheduled  
for December 3, 1962 and it was decided that a public hearing  
should be held immediately preceding such meeting on the

DEFENDANTS EXHIBIT H

A-170

DEFENDANT

EXHIBIT

U. S. DIST. COURT  
S. D. OF N. Y.

MAR 4 - 1974

4  
A regular meeting of the Board of Trustees of the Incorporated Village of Laurel Hollow, Nassau County, New York, was held at the residence of Mayor Howard Corning, Jr., in said Village on December 3, 1962 at 9:55 P.M.

Present: Howard Corning, Jr., Mayor

John F. MacKay

Douglas Despard

Hugh G. Johnson, Building Inspector

Margaret Nittoli, Village Clerk

Thomas C. Platt, Jr., Village Attorney

Absent: Orin T. Leach

Hutchinson DuBosque

The reading of the minutes of the regular meeting held on October 22, 1962 was waived, copies thereof having been circulated among members of the Board. The minutes of such meeting were, upon motion duly made and seconded, approved.

Loren Berry, Esq. of the firm of Royall, Koegel & Rogers appeared and submitted a memorandum on behalf of the Mimi Dee Rest Home requesting an amendment of the Village Building Zone Ordinance. Following a brief statement by Mr. Berry on behalf of the aforesaid applicant, he left

the meeting.

A general discussion was had with respect to the proposed amendments to Sections 1 of General Ordinances I and VI and the proposed adoption of General Ordinance XX. It was the consensus of the Board that the adoption of General Ordinance XX should be deferred and further consideration should be given to this ordinance. No one having appeared in opposition to the proposed amendments to Sections 1 of General Ordinance I and VI, it was upon motion duly made and seconded, unanimously:

RESOLVED that Section 1 of General Ordinance I and Section 1 of General Ordinance VI be amended so that said ordinances now read in full as follows:

#### ORDINANCE I - REGULATION OF TRAFFIC

Section 1. (a) Twenty-five (25) miles per hour is hereby established as the maximum speed at which vehicles may proceed within the corporate limits of this Village except on the following highways:

- (1) State Highway No. 25-A
- (2) Syosset-Cold Spring Harbor Road

(b) Thirty-five (35) miles per hour is hereby established as the maximum speed at which vehicles may proceed within the corporate limits of this Village on Syosset-Cold Spring Harbor Road.

Section 2. No person shall operate a vehicle (other than an ambulance, a fire vehicle or police vehicle when on an emergency trip) on any highway, street or private road open to public motor vehicle traffic at a rate of speed in excess of the maximum established in Section 1 of this ordinance.

#### Section 3. Through Highways

(a) Moore's Hill Road is hereby designated as a through highway and stop signs shall be erected on the

Following entrances thereto:

1. Stewart Lane from the south.
2. Ridge Road from the north.
3. Laurel Hollow Road from the north and south.

(b) Syosset-Cold Spring Harbor Road is hereby designated as a through highway between its intersection with State Highway No. 25-A and the southerly Village line, and a stop sign shall be erected at the White Oak Tree Road entrance thereto from the west.

Section 4. All vehicles approaching said through highways shall come to a full stop unless otherwise directed by a peace officer or signal.

Section 5. No person shall park or stand any vehicle on any portion of any highway, street or private road open to public motor vehicle traffic in this Village.

Section 6. No person shall park, stand, stop or drive a vehicle on any portion of the parking area leased by this Village located at the northeasterly end of Laurel Hollow Road and lying immediately to the west thereof and to the south of Cold Spring Harbor, or on any portion of the parking area located at the northwesterly end of Bungtown Road and owned by the Long Island Biological Association, unless:

1. He be a resident of, or owner of real property in, this Village; and
2. (a) He shall have first obtained from the Board of Trustees of this Village (i) a permit, and then only during such periods and times as may be prescribed in such permit, and (ii) an identifying sticker, which shall be displayed on the vehicle at all times when in the area; or  
(b) He shall first have obtained from the Long Island Biological Association (i) a permit, and then only in the parking area located at the northwesterly end of Bungtown Road and only during such periods and times as may be prescribed in such permit, and (ii) an identifying sticker, which shall be displayed on the vehicle at all times when in the area.

Section 7. Every person convicted of a traffic infraction for a violation of any of the provisions of Section 2, 4, 5 or 6 of this ordinance shall for a first conviction thereof be punished by a fine of not more than fifty dollars or by imprisonment for not more than fifteen days or by both such fine and imprisonment; for a second such conviction within eighteen months thereafter such person shall be

1

punished by a fine of not more than one hundred dollars or by imprisonment for not more than forty-five days or by both such fine and imprisonment; upon a third or subsequent conviction within eighteen months after the first conviction such person shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than ninety days or by both such fine and imprisonment.

Section 8. If any clause, sentence, section, paragraph or provision of this Ordinance shall be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not invalidate the remainder of this Ordinance, but shall be confined in its operation to the clause, sentence, section paragraph or provision directly involved in the controversy in which such judgment shall have been rendered.

\* \* \*

#### ORDINANCE VI - DUMPING AND LITTERING

Section 1. No person shall throw, place, deposit, dump or litter or suffer or permit any servant, agent, employee or person in his or her charge to throw, place, deposit, dump or litter any ashes, garbage tin cans, automobiles, automobile parts, bottles, dead animals, grass, flammable materials, junk, leaves lumber, metal, plastic, putrescible substances, waste, waste paper or refuse matter of any kind on the surface of any street, public grounds or private property in this Village for the purpose of abandonment or otherwise; provided, however, that the foregoing provision shall not be deemed to prohibit a private property owner from making and retaining a compost heap on his property for normal gardening purposes.

Section 2. Any person violating any provision of this ordinance shall be punishable by a fine or not more than one hundred dollars for each and every offense, and in addition thereto such conduct shall constitute and is hereby declared to be disorderly conduct, and any person violating the same shall be and is hereby declared to be a disorderly person.

Mayor Corning and Mr. Platt requested authority to retain the law firm of Sprague & Stern, Esqs. to assist in the prosecution of the contempt proceeding against Laverne Originals, Inc., Erwine Laverne and Estelle Laverne; whereupon, on motion duly made and seconded, it was unanimously

RESOLVED that the Village Attorney be and he hereby is authorized to retain the law firm of Sprague & Stern, Esqs., Mineola, New York, to assist him in the prosecution of the contempt proceeding against the defendants Laverne Originals, Inc., Erwine Laverne and Estelle Laverne.

Trustee Despard reported briefly on the activities of his Civil Defense organization.

The Village Attorney was requested to prepare an amendment to Section 6 of General Ordinance No. 1 so as to make such section applicable to the property owned by the Village located at the northeasterly end of Laurel Hollow Road and lying immediately to the east thereof and also to prepare an amendment to Section 10.2(a) of Article X of the Building Zone Ordinance and to notice such proposed amendments for a public hearing on January 15, 1963.

Payment of 51 bills in the sum of \$11,597.43 was approved.

There being no further business to come before  
the meeting, it was, upon motion duly made and seconded,  
adjourned.

---

Howard Corning, Jr.  
Mayor

DEFENDANTS EXHIBIT J

A-177

1974

A regular meeting of the Board of Trustees of Incorporated Village of Laurel Hollow, Nassau County, New York, was held at the residence of Mayor Howard Corning, Jr. in said Village on January 29, 1963 at 8:30 P.M.

Present: Howard Corning, Jr., Mayor

John F. MacKay

Douglas Despard

Hutchinson DuBosque

Margaret Nittoli, Village Clerk

Thomas C. Platt, Jr., Village Attorney

Absent: Orin T. Leach

The reading of the minutes of the regular meeting held on December 3, 1962 was waived, copies thereof having been circulated among members of the Board. The minutes of such meeting were, upon motion duly made and seconded, approved.

After some discussion, on motion duly made and seconded, it was unanimously

RESOLVED that the Incorporated Village of Laurel Hollow adopt and it does hereby adopt the Nassau County Assessment Roll of 1962-63 as the basis of the Incorporated Village of Laurel Hollow 1963-64 Assessment Roll; and it was further

RESOLVED, that any construction started subsequent to the completion of the

County Assessment Roll for 1962-63  
be assessed at its value as of January 1,  
1963.

Mrs. Nittoli reported that Grievance Day would be held on February 19 between the hours of 2:30 P.M. and 6:30 P.M. at her residence. The Mayor announced that the Board of Trustees would hold its next meeting on the same date.

Mayor Corning requested each of the Trustees to submit his budget estimates as soon as possible.

Mrs. Nittoli submitted to the Board a statement of unpaid taxes. After some discussion, it was unanimously resolved that the Village Attorney should mail a letter in the form attached hereto to each delinquent taxpayer.

Mr. Platt made a report to the Trustees with respect to the various Laverne proceedings.

A general discussion was had with respect to the proposed regulation of uniformity of buildings ordinance and the proposed amendment to Section 10.2(a) of the Building Zone Ordinance and it was decided to defer action on such ordinances at least for the time being.

A discussion was also had with respect to the proposed amendment to Section 6 of General Ordinance I. No one having appeared in opposition to such proposed amendment at the public hearing held on January 15, 1963, it was, upon

motion duly made and seconded, unanimously

RESOLVED, that Section 6 of General Ordinance I be amended so that said ordinance now reads in full as follows:

#### ORDINANCE I - REGULATION OF TRAFFIC

Section 1. (a) Twenty-five (25) miles per hour is hereby established as the maximum speed at which vehicles may proceed within the corporate limits of this Village except on the following highways:

- (1) State Highway No. 25-A
- (2) Syosset-Cold Spring Harbor Road

(b) Thirty-five (35) miles per hour is hereby established as the maximum speed at which vehicles may proceed within the corporate limits of this Village on Syosset-Cold Spring Harbor Road.

Section 2. No person shall operate a vehicle (other than an ambulance, a fire vehicle or police vehicle when on an emergency trip) on any highway, street or private road open to public motor vehicle traffic at a rate of speed in excess of the maximum established in Section 1 of this ordinance.

#### Section 3. Through Highways

(a) Moore's Hill Road is hereby designated as a through highway and stop signs shall be erected on the following entrances thereto:

1. Stewart Lane from the south.
2. Ridge Road from the north.
3. Laurel Hollow Road from the north and south.

(b) Syosset-Cold Spring Harbor Road is hereby designated as a through highway between its intersection with State Highway No. 25-A and the southerly Village line, and a stop sign shall be erected at the White Oak Tree Road entrance thereto from the west.

Section 4. All vehicles approaching said through highways shall come to a full stop unless otherwise

directed by a peace officer or signal.

Section 5. No person shall park or stand any vehicle on any portion of any highway, street or private road open to public motor vehicle traffic in this Village.

Section 6. No person shall park, stand, stop or drive a vehicle on any portion of the parking area owned by this Village located at the northerly end of Laurel Hollow Road and lying immediately to the east thereof and to the south of Cold Spring Harbor, or on any portion of the parking area located at the northwesterly end of Bungtown Road and owned by the Long Island Biological Association unless:

1. He be a resident of, or owner of real property in, this Village; and

2. (a) He shall have first obtained from the Board of Trustees of this Village (i) a permit, and then only during such periods and times as may be prescribed in such permit, and (ii) an identifying sticker, which shall be displayed on the vehicle at all times when in the area; or

(b) He shall first have obtained from the Long Island Biological Association (i) a permit, and then only in the parking area located at the northwesterly end of Bungtown Road and only during such periods and times as may be prescribed in such permit, and (ii) an identifying sticker, which shall be displayed on the vehicle at all times when in the area.

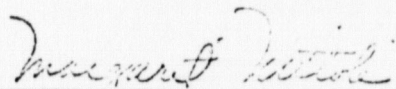
Section 7. Every person convicted of a traffic infraction for a violation of any of the provisions of Section 2, 4, 5 or 6 of this ordinance shall for a first conviction thereof be punished by a fine of not more than fifty dollars or by imprisonment for not more than fifteen days or by both such fine and imprisonment; for a second such conviction within eighteen months thereafter such person shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than forty-five days or by both such fine and

imprisonment; upon a third or subsequent conviction within eighteen months after the first conviction such person shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than ninety days or by both such fine and imprisonment.

Section 8. If any clause, sentence, section, paragraph or provision of this Ordinance shall be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not invalidate the remainder of this Ordinance, but shall be confined in its operation to the clause, sentence, section, paragraph or provision directly involved in the controversy in which such judgment shall have been rendered.

Payment of 67 bills in the sum of \$22,797.52 was approved.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, adjourned.



---

Margaret Nittoli  
Village Clerk

Dated: Nassau County, N.Y.  
February , 1963

DEFENDANTS EXHIBIT K

A-183

DEFENDANT

EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

MAR 5 - 1974

K  
A regular meeting of the Board of Trustees of the Incorporated Village of Laurel Hollow, Nassau County, New York, was held at the residence of Howard Corning, Jr., Mayor, at 8:30 P.M. on the 26th day of February, 1963.

Present: Howard Corning, Jr., Mayor

Hutchinson DuBosque

John F. MacKay

Douglas Despard

Margaret Nittoli, Village Clerk

Thomas C. Platt, Jr., Village Attorney

Absent: Orin T. Leach

Also present at the invitation of the Board was David Ingraham, Chairman of the Board of Zoning Appeals.

The reading of the minutes of the meeting held on January 29, 1963 was waived and the same were approved as circulated.

A general discussion was had with respect to the various pending Laverne cases and the Village Attorney reported on the status thereof. The Village Attorney pointed out that Mr. Laverne had represented to the Nassau County Supreme Court that he was removing all of the offending materials and equipment from the premises. The Village Attorney also stated that Mr. Laverne's attorney

had indicated to him that all of such material would be removed within a day or two, but that Laverne was going to press his lawsuit against the Village and its officers. Under such circumstances the Village Attorney said that it would be appropriate for the Village to commence a lawsuit pursuant to §10.2(b) of Article X of the Building Zone Ordinance against Laverne, Inc., Erwine Laverne and Estelle Laverne for a civil penalty of \$100 for each and every day that said defendants had violated said Ordinance since the Village had commenced the original proceedings against said defendants in the early 1950s. After some discussion, upon motion made by Mayor Corning and duly seconded by Trustee DuBosque, it was unanimously

RESOLVED, that the Village commence a lawsuit against Laverne, Inc., Erwine Laverne and Estelle Laverne pursuant to Section 10.2(b) of Article X of the Building Zone Ordinance to recover civil penalties of \$100 per day for each and every day that said defendants had violated said Ordinance;

and it was

FURTHER RESOLVED, that the Village retain the law firm of Sprague, Stern, Aspland, Dwyer & Tobin at 220 Old Country Road, Mineola, Nassau County, New York to prosecute said lawsuit.

The Village Clerk reported that no one had appeared on Grievance Day to protest any assessment made for the coming year.

The Board of Trustees approved the fire contracts made with the Syosset Fire District and the Oyster Bay fire companies in the form attached hereto.

The Mayor reported that the next meeting of the Board would be held on March 26, 1963.

Payment of 22 bills in the sum of \$1,982.87 was approved.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, adjourned.

---

Village Clerk

<sup>Two (2)</sup>  
Service of ~~three (3)~~ copies of the within  
*Joint Appendix* is hereby admitted  
this            day of

.....  
Attorney(s) for

2 COPY RECEIVED

SEP 25 1974

MUDGE ROSE GUTHRIE & ALEXANDER  
ATTORNEYS FOR  
.....

